

# FEDERAL REGISTER

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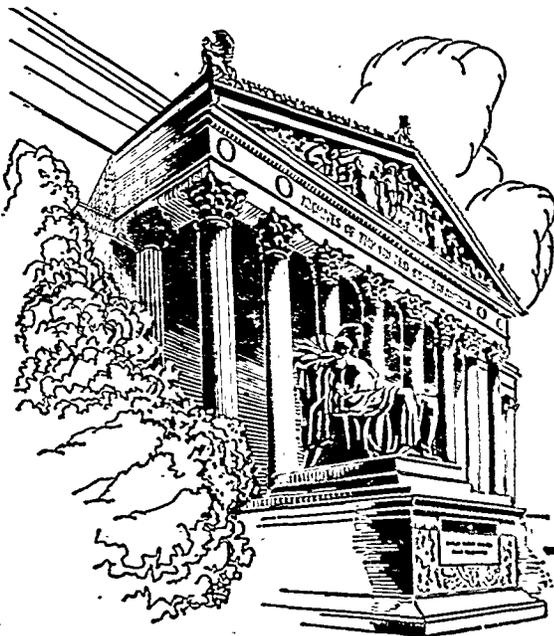
Friday, December 11, 1970 • Washington, D.C.

Pages 18791-18899

**Agencies in this issue—**

Agricultural Research Service  
Atomic Energy Commission  
Civil Aeronautics Board  
Commerce Department  
Consumer and Marketing Service  
Customs Bureau  
Education Office  
Federal Aviation Administration  
Federal Housing Administration  
Federal Maritime Commission  
Federal Power Commission  
Food and Drug Administration  
General Services Administration  
Hazardous Materials Regulations Board  
Health, Education, and Welfare Department  
Interim Compliance Panel  
(Coal Mine Health and Safety)  
Interstate Commerce Commission  
Land Management Bureau  
Mine Operations Appeals Board  
National Aeronautics and Space Administration  
National Labor Relations Board  
Public Health Service  
Social and Rehabilitation Service  
Tariff Commission  
Veterans Administration

Detailed list of Contents appears inside.





# Contents

## AGRICULTURAL RESEARCH SERVICE

- Rules and Regulations  
Hog cholera and other communicable swine diseases; areas quarantined ..... 18795  
Import permits; animals and animal semen from Canada..... 18795

## AGRICULTURE DEPARTMENT

See Agricultural Research Service; Consumer and Marketing Service.

## ATOMIC ENERGY COMMISSION

- Notices  
Toledo Edison Co. and Cleveland Electric Illuminating Co.; application for construction permit and facility license..... 18889

## CIVIL AERONAUTICS BOARD

- Proposed Rule Making  
Service on affected commuter air carriers ..... 18877

### Notices

- Hearings, etc.:  
American Airlines, Inc., and Braniff Airways, Inc. .... 18889  
Inter-Mountain Aircraft Corp. and Boise Aviation, Inc. .... 18891  
Valley Airlines, Inc. .... 18891  
Weight limitation investigation. 18892

## COMMERCE DEPARTMENT

- Notices  
Assistant Secretary for Tourism; authority and functions..... 18887  
United States Travel Service; organization and functions..... 18887

## CONSUMER AND MARKETING SERVICE

- Notices  
Humanely slaughtered livestock; identification of carcasses; changes in lists of establishments ..... 18887

## CUSTOMS BUREAU

- Rules and Regulations  
Special classes of merchandise; importations of fish and wildlife; correction..... 18796

## EDUCATION OFFICE

- Rules and Regulations  
College library resources program; miscellaneous amendments..... 18875

## FEDERAL AVIATION ADMINISTRATION

- Notices  
Consideration of VFR utilization of navigational aids in agency establishment or decommissioning criteria; invitation for comments ..... 18889

## FEDERAL HOUSING ADMINISTRATION

- Rules and Regulations  
Miscellaneous amendments to chapter ..... 18796

## FEDERAL MARITIME COMMISSION

- Notices  
Agreements filed:  
Florida Inter-Island Shipping Corp. and Canadian Gulf Line of Florida, Inc. .... 18893  
Hapag-Lloyd AG et al. .... 18892

## FEDERAL POWER COMMISSION

- Notices  
Hearings, etc.:  
Bradley Producing Corp. .... 18894  
Humble Oil & Refining Co. et al. 18893  
Lone Star Gas Co. .... 18895  
Pennsylvania Gas Co. .... 18895  
Southern Natural Gas Co. .... 18895

## FOOD AND DRUG ADMINISTRATION

- Notices  
Monsanto Co.; food additive petition ..... 18888

## GENERAL SERVICES ADMINISTRATION

- Rules and Regulations  
Procurement; contract cost principles and procedures; miscellaneous amendments..... 18797  
Notices  
Secretary of Defense; delegation of authority ..... 18893

## HAZARDOUS MATERIALS REGULATIONS BOARD

- Proposed Rule Making  
Transportation of hazardous materials; cylinder specifications... 18879

## HEALTH, EDUCATION, AND WELFARE DEPARTMENT

- See also Education Office; Food and Drug Administration; Public Health Service; Social and Rehabilitation Service.  
Rules and Regulations  
Contracts and grants for planning and evaluation of Office of Education programs..... 18874  
Notices  
Health Services and Mental Health Administration; statement of organization, functions, and delegations of authority..... 18889

## HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Housing Administration.

## INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

- Rules and Regulations  
Practice and procedure; requests for public hearings..... 18871  
Notices  
United States Fuel Co. and Stewart Coal Co.; opportunity for hearing regarding applications for renewal permits..... 18893

## INTERIOR DEPARTMENT

See Land Management Bureau; Mine Operations Appeals Board.

## INTERSTATE COMMERCE COMMISSION

- Notices  
Central Railroad Company of New Jersey; conference..... 18897  
Fourth section application for relief ..... 18896  
Motor carrier temporary authority applications ..... 18896

## LAND MANAGEMENT BUREAU

- Rules and Regulations  
Alaska; public land order..... 18874  
Notices  
Classification of public lands:  
Arizona; transfer out of Federal ownership..... 18883  
Idaho; multiple-use management ..... 18883  
Nevada; transfer out of Federal ownership ..... 18886

## MINE OPERATIONS APPEALS BOARD

- Rules and Regulations  
Organization and procedures; miscellaneous amendments..... 18870

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

- Rules and Regulations  
Public contracts and property management; general provisions..... 18803  
Notices  
Avco Corp.; intent to grant foreign patent license..... 18895

## NATIONAL LABOR RELATIONS BOARD

- Rules and Regulations  
Procedure for prevention of unfair labor practices; subpoenas..... 18796

(Continued on next page)

**PUBLIC HEALTH SERVICE****Rules and Regulations**

Air quality control regions; designation of certain interstate and intrastate regions (4 documents)..... 18872, 18873

**SOCIAL AND REHABILITATION SERVICE****Proposed Rule Making**

Amount, duration, and scope of medical assistance; early and periodic screening, diagnosis, and treatment of individuals under age 21..... 18878

**TARIFF COMMISSION****Notices**

Albany Billiard Ball Co.; hearing regarding petition for determination of eligibility to apply for adjustment assistance..... 18896

**TRANSPORTATION DEPARTMENT**

*See* Federal Aviation Administration; Hazardous Materials Regulations Board.

**TREASURY DEPARTMENT**

*See* Customs Bureau.

**VETERANS ADMINISTRATION****Rules and Regulations**

Delegations of authority; Deputy Chief Medical Director..... 18871  
Loan guaranty; refinancing..... 18871

**List of CFR Parts Affected**

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1970, and specifies how they are affected.

<b>9 CFR</b>	<b>29 CFR</b>	<b>43 CFR</b>
76..... 18795	102..... 18796	<b>PUBLIC LAND ORDERS:</b>
92..... 18795		4582 (modified by PLO 4962)..... 18874
<b>14 CFR</b>	<b>30 CFR</b>	4962..... 18874
<b>PROPOSED RULES:</b>	300..... 18870	<b>45 CFR</b>
302..... 18877	302..... 18870	61..... 18874
376..... 18877	505..... 18871	131..... 18875
<b>19 CFR</b>	<b>38 CFR</b>	<b>PROPOSED RULES:</b>
12..... 18796	2..... 18871	249..... 18878
	36..... 18871	
<b>24 CFR</b>	<b>41 CFR</b>	<b>49 CFR</b>
203..... 18796	1-15..... 18797	<b>PROPOSED RULES:</b>
213..... 18796	18-1..... 18803	171..... 18870
234..... 18796		173..... 18870
242..... 18796	<b>42 CFR</b>	178..... 18870
	81 (4 documents)..... 18872, 18873	

# Rules and Regulations

## Title 9—ANIMALS AND ANIMAL PRODUCTS

### Chapter I—Agricultural Research Service, Department of Agriculture

#### SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 70-309]

#### PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

##### Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111-113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, in paragraph (e)(11) relating to the State of Texas, a new subdivision (xx) relating to Wise County is added to read:

(xx) That portion of Wise County bounded by a line beginning at the junction of Farm-to-Market Road 51 and U.S. Highway 287 (also U.S. Highway 81); thence, following U.S. Highway 287 in a southeasterly direction to Farm-to-Market Road 730; thence, following Farm-to-Market Road 730 in a southeasterly direction to Farm-to-Market Road 2048; thence, following Farm-to-Market Road 2048 in a southwesterly direction to Farm-to-Market Road 51; thence, following Farm-to-Market Road 51 in a northeasterly direction to its junction with U.S. Highway 287.

2. In § 76.2, in paragraph (e) (8) relating to the State of Ohio, subdivisions (iii) relating to Mercer County, and (iv) relating to Pickaway County are deleted.

(Secs. 4-7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, secs. 1-4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 29 F.R. 16210, as amended)

*Effective date.* The foregoing amendments shall become effective upon issuance.

The amendments quarantine a portion of Wise County, Tex., because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement

of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined portion of such county.

The amendments also exclude portions of Mercer and Pickaway Counties in Ohio from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76 will apply to the areas excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera, they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 7th day of December 1970.

F. J. MULHERN,  
Acting Administrator,  
Agricultural Research Service.

[F.R. Doc. 70-16700; Filed, Dec. 10, 1970; 8:48 a.m.]

#### SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS

#### PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

##### Import Permits; Animals and Animal Semen From Canada

Pursuant to provisions of sections 6, 7, 8, and 10 of the Act of August 30, 1890, as amended, section 2 of the Act of February 2, 1903, as amended, and sec-

tion 4, 5, and 11 of the Act of July 2, 1962 (1 U.S.C. 102-105, 111, 134c, 134d, and 134f), § 92.19(a) of Part 92, Title 9, Code of Federal Regulations, relating to import permit requirements in connection with the importation of animals and animal semen from Canada, is hereby amended to read:

##### § 92.19 Import permit and declaration for animals and animal semen.

(a) For ruminants, swine, poultry, and animal semen intended for importation from Canada, the importer shall first apply for and obtain from the Division an import permit as provided in § 92.4. *Provided*, That an import permit is not required for poultry offered for entry at a land border port designated in § 92.3(b); *And provided, further*, That an import permit is not required for a ruminant or swine, or for semen from a ruminant or swine, offered for entry at a land border port designated in § 92.3(b) if such animal or the donor animal, in the case of semen: (1) Was born in Canada or the United States, and has been in no country other than Canada or the United States, or (2) has been legally imported into Canada from some other country and unconditionally released in Canada so as to be eligible to move freely within that country without restriction of any kind and has been in Canada after such release for 60 days or longer.

(Secs. 6, 7, 8, 10, 26 Stat. 416, 417, as amended, sec. 2, 32 Stat. 792, as amended; secs. 4, 5, and 11, 76 Stat. 130, 132, 21 U.S.C. 102-105, 111, 134c, 134d, 134f; and 29 F.R. 16210, as amended)

*Effective date.* The foregoing amendment shall become effective upon issuance.

The purpose of the foregoing amendment is to facilitate the entry into the United States of animals and animal semen from Canada by waiving the requirement for an import permit if such animals, or donor animals in the case of semen, have been legally imported into Canada from some other country and unconditionally released in Canada so as to be eligible to move freely within that country without restriction of any kind and have been in Canada after such release for 60 days or longer. The amendment also relieves restrictions on the importation of animals that have been in no country other than Canada or the United States.

The amendment relieves certain restrictions presently imposed and must be made effective immediately to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is

found upon good cause that notice and other public procedure with respect to the amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 7th day of December 1970.

F. J. MULHERN,  
*Acting Administrator,*  
*Agricultural Research Service.*

[F.R. Doc. 70-16701; Filed, Dec. 10, 1970;  
8:49 a.m.]

## Title 24—HOUSING AND HOUSING CREDIT

Chapter II—Federal Housing Administration, Department of Housing and Urban Development

### MISCELLANEOUS AMENDMENTS TO CHAPTER

The following miscellaneous amendments have been made to this chapter relative to the change in the maximum rate of interest to 8 percent:

SUBCHAPTER C—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

#### PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

##### Subpart A—Eligibility Requirements

1. In § 203.20 paragraph (a) is amended to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8 percent, except that the mortgage may bear interest at a rate not to exceed 8½ percent with respect to mortgages insured pursuant to applications for commitments received by the Secretary on or before December 2, 1970, and dated not later than December 1, 1970.

2. In § 203.74 paragraph (a) is amended to read as follows:

§ 203.74 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 8 percent, except that the loan may bear interest at a rate not to exceed 8½ percent with respect to loans insured pursuant to applications for commitments received by the Secretary on or before December 2, 1970, and dated not later than December 1, 1970.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 203, 52 Stat. 10, as amended; 12 U.S.C. 1709)

#### SUBCHAPTER E—COOPERATIVE HOUSING INSURANCE

### PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

#### Subpart C—Eligibility Requirements—Individual Properties Released From Project Mortgage

5. In § 213.511 paragraph (a) is amended to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8 percent, except that the mortgage may bear interest at a rate not to exceed 8½ percent with respect to mortgages insured pursuant to applications for commitments received by the Secretary on or before December 2, 1970, and dated not later than December 1, 1970.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 213, 64 Stat. 54, as amended; 12 U.S.C. 1715e)

#### SUBCHAPTER I—CONDOMINIUM HOUSING INSURANCE

### PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

#### Subpart A—Eligibility Requirements—Individually Owned Units

9. In § 234.29 paragraph (a) is amended to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8 percent, except that the mortgage may bear interest at a rate not to exceed 8½ percent with respect to mortgages insured pursuant to applications for commitments received by the secretary on or before December 2, 1970, and dated not later than December 1, 1970.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 234, 75 Stat. 160; 12 U.S.C. 1715y)

#### SUBCHAPTER Q—MORTGAGE INSURANCE FOR NONPROFIT HOSPITALS

### PART 242—NONPROFIT HOSPITALS

#### Subpart A—Eligibility Requirements

Section 242.33 is amended to read as follows:

§ 242.33 Maximum interest rate.

The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 8 percent, except that the mortgage may bear interest at a rate not to exceed 8½ percent with respect to mortgages insured pursuant to:

(a) Letters issued by the Secretary before December 2, 1970, inviting submission of an application for commitment.

(b) Applications for commitment received by the Secretary before December 2, 1970.

Interest shall be payable in monthly installments on the principal then outstanding.

(Sec. 211, 52 Stat. 23; 12 U.S.C. 1715b. Interprets or applies sec. 242, 82 Stat. 6900; 12 U.S.C. 1715z-7)

Issued at Washington, D.C., December 4, 1970.

EUGENE A. GULLEDGE,  
*Federal Housing Commissioner.*

[F.R. Doc. 70-16685; Filed, Dec. 10, 1970;  
8:47 a.m.]

## Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 70-242]

### PART 12—SPECIAL CLASSES OF MERCHANDISE

#### Importations of Fish and Wildlife

##### Correction

In F.R. Doc. 70-15797 appearing at page 17992 in the issue of Tuesday, November 24, 1970, in § 12.26(g), the last word in the 29th line of the third column reading "termination" should read "determination".

## Title 29—LABOR

Chapter I—National Labor Relations Board

### PART 102—RULES AND REGULATIONS, SERIES 8

#### Subpart B—Procedure Under Section 10 (a) to (i) of the Act for the Prevention of Unfair Labor Practices

##### ISSUANCE OF SUBPENAS

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935,<sup>1</sup> the National Labor Relations Board hereby issues the following further amendments to its rules and regulations, Series 8, as amended, which it finds necessary to carry out the provisions of said Act.

Section 11(3) of the National Labor Relations Act has been repealed by title II of the Organized Crime Control Act of 1970, 91 Stat. 452, effective December 14, 1970, which statute also enacts new provisions relating to claims of privilege against self-incrimination. This amendment is made in order to provide implementing procedures for a claim of privilege against self-incrimination in proceedings arising under the National Labor Relations Act.

<sup>1</sup> 49 Stat. 449; 29 U.S.C. 151-166, as amended by act of June 23, 1947 (61 Stat. 130; 29 U.S.C. Sup. 151-167), act of Oct. 23, 1951 (65 Stat. 601; 29 U.S.C. 158, 159, 168), and act of Sept. 14, 1959 (73 Stat. 519; 29 U.S.C. 141-168).

This amendment is effective December 14, 1970. National Labor Relations Board rules and regulations, Series 8, as hereby further amended, shall be in force and effect until further amended, or rescinded by the Board.

Dated, Washington, D.C., December 8, 1970.

By direction of the Board.

OGDEN W. FIELDS,  
*Executive Secretary.*

In § 102.31 paragraph (c) is amended and a new paragraph (e) is added to read as follows:

§ 102.31 Issuance of subpoenas; petitions to revoke subpoenas; rulings on claim of privilege against self-incrimination; subpoena enforcement proceedings; right to inspect and copy data.

(c) With the approval of the Attorney General of the United States, the Board may issue an order requiring any individual to give testimony or provide other information at any proceeding before the Board if, in the judgment of the Board, (1) the testimony or other information from such individual may be necessary to the public interest, and (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination. Requests for the issuance of such an order by the Board may be made by any party. Prior to hearing, and after transfer of the proceeding to the Board, such requests shall be made to the Board in Washington, D.C., and the Board shall take such action thereon as it deems appropriate. During the hearing, and thereafter while the proceeding is pending before the trial examiner, such requests shall be made to the trial examiner. If the trial examiner denies the request, his ruling shall be subject to appeal to the Board in Washington, D.C., in the manner and to the extent provided in § 102.26 with respect to rulings and orders by a trial examiner, except that requests for permission to appeal in this instance shall be filed within 24 hours of the trial examiner's ruling. If no appeal is sought within such time, or the appeal is denied, the ruling of the trial examiner shall become final and his denial shall become the ruling of the Board. If the trial examiner deems the request appropriate, he shall recommend that the Board seek the approval of the Attorney General for the issuance of the order, and the Board shall take such action on the trial examiner's recommendation as it deems appropriate. Until the Board has issued the requested order no individual who claims the privilege against self-incrimination shall be required, or permitted, to testify or to give other information respecting the subject matter of the claim.

(e) Persons compelled to submit data or evidence at a public proceeding are entitled to retain or, on payment of law-

fully prescribed costs, to procure copies or transcripts of the data or evidence submitted by them. Persons compelled to submit data or evidence in the non-public investigative stages of proceedings may, for good cause, be limited by the regional director to inspection of the official transcript of their testimony, but shall be entitled to make copies of documentary evidence or exhibits which they have produced.

[F.R. Doc. 70-16707; Filed, Dec. 10, 1970; 8:49 a.m.]

## Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

### Chapter 1—Federal Procurement Regulations

#### PART 1-15—CONTRACT COST PRINCIPLES AND PROCEDURES

##### Miscellaneous Amendments

This amendment adds a new § 1-15.108 and Subpart 1-15.7 to implement Bureau of the Budget (now Office of Management and Budget) Circular A-87 which established principles and standards for determining costs applicable to grants and contracts with State and local governments. The principles are designed to provide a basis for a uniform approach to determining costs, to promote efficiency, and to foster better relationships between State and local governments and the Federal Government.

The table of contents for Part 1-15 is amended to provide the following new entries:

Sec.	
1-15.108	Grants and contracts with State and local governments.
Subpart 1-15.7	Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments
1-15.701	Purpose and scope.
1-15.701-1	Objectives.
1-15.701-2	Policy guides.
1-15.701-3	Application.
1-15.702	Definitions.
1-15.702-1	Approval or authorization of the grantor Federal agency.
1-15.702-2	Cost allocation plan.
1-15.702-3	Cost.
1-15.702-4	Cost objective.
1-15.702-5	Federal agency.
1-15.702-6	Grant.
1-15.702-7	Grant program.
1-15.702-8	Grantee.
1-15.702-9	Local unit.
1-15.702-10	Other State or local agencies.
1-15.702-11	Services.
1-15.702-12	Supporting services.
1-15.703	Basic guidelines.
1-15.703-1	Factors affecting allowability of costs.
1-15.703-2	Allocable costs.
1-15.703-3	Applicable credits.
1-15.704	Composition of cost.
1-15.704-1	Total cost.
1-15.704-2	Classification of costs.
1-15.705	Direct costs.
1-15.705-1	General.
1-15.705-2	Application.
1-15.706	Indirect costs.
1-15.706-1	General.
1-15.706-2	Grantee departmental indirect costs.

Sec.	
1-15.706-3	Limitation on indirect costs.
1-15.707	Cost incurred by agencies other than the grantee.
1-15.707-1	General.
1-15.707-2	Alternative methods of determining indirect cost.
1-15.708	Cost incurred by grantee department for others.
1-15.708-1	General.
1-15.709	Cost allocation plan.
1-15.709-1	General.
1-15.709-2	Requirements.
1-15.709-3	Approval of cost allocation plan.
1-15.710	Standards for selected items of cost.
1-15.711	Allowable costs.
1-15.711-1	Accounting.
1-15.711-2	Advertising.
1-15.711-3	Advisory councils.
1-15.711-4	Audit service.
1-15.711-5	Bonding.
1-15.711-6	Budgeting.
1-15.711-7	Building lease management.
1-15.711-8	Central stores.
1-15.711-9	Communications.
1-15.711-10	Compensation for personal services.
1-15.711-11	Depreciation and use allowances.
1-15.711-12	Disbursing service.
1-15.711-13	Employee fringe benefits.
1-15.711-14	Employee morale, health, and welfare costs.
1-15.711-15	Exhibits.
1-15.711-16	Legal expenses.
1-15.711-17	Maintenance and repair.
1-15.711-18	Materials and supplies.
1-15.711-19	Memberships, subscriptions, and professional activities.
1-15.711-20	Motor pools.
1-15.711-21	Payroll preparation.
1-15.711-22	Personnel administration.
1-15.711-23	Printing and reproduction.
1-15.711-24	Procurement service.
1-15.711-25	Taxes.
1-15.711-26	Training and education.
1-15.711-27	Transportation.
1-15.711-28	Travel.
1-15.712	Costs allowable with approval of grantor agency.
1-15.712-1	Automatic data processing.
1-15.712-2	Building space and related facilities.
1-15.712-3	Capital expenditures.
1-15.712-4	Insurance and indemnification.
1-15.712-5	Management studies.
1-15.712-6	Preagreement costs.
1-15.712-7	Professional services.
1-15.712-8	Proposal costs.
1-15.713	Unallowable costs.
1-15.713-1	Bad debts.
1-15.713-2	Contingencies.
1-15.713-3	Contributions and donations.
1-15.713-4	Entertainment.
1-15.713-5	Fines and penalties.
1-15.713-6	Governor's expenses.
1-15.713-7	Interest and other financial costs.
1-15.713-8	Legislative expenses.
1-15.713-9	Underrecovery of costs under grant agreements.

Authority: The provisions of this Subpart 1-15.7 issued under sec. 205(c), 63 Stat. 380; 40 U.S.C. 386(c).

#### Subpart 1-15.1—Applicability

New § 1-15.108 is added as follows:

§ 1-15.108 Grants and contracts with State and local governments.

Subpart 1-15.7 of this Part 1-15 provides principles and standards for determining costs applicable to grants and contracts with State and local governments. They are designed to provide the

basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and the government. These cost principles apply to all programs that involve grants and contracts with State and local governments. They do not apply to grants and contracts with:

(a) Publicly financed educational institutions subject to Subpart 1-15.3 of this Part 1-15; or

(b) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

New Subpart 1-15.7 is added as follows:

**Subpart 1-15.7—Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments**

**§ 1-15.701 Purpose and scope.**

**§ 1-15.701-1 Objectives.**

This subpart sets forth principles for determining the allowable costs of programs administered by State or local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

**§ 1-15.701-2 Policy guides.**

The application of these principles is based on the fundamental premise that:

(a) State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

(b) The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

**§ 1-15.701-3 Application.**

These principles will be applied as provided in § 1-15.108.

**§ 1-15.702 Definitions.**

**§ 1-15.702-1 Approval or authorization of the grantor Federal agency.**

"Approval or authorization of the grantor Federal agency" means documentation evidencing consent prior to incurring specific cost.

**§ 1-15.702-2 Cost allocation plan.**

"Cost allocation plan" means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

**§ 1-15.702-3 Cost.**

"Cost," as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

**§ 1-15.702-4 Cost objective.**

"Cost objective" means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

**§ 1-15.702-5 Federal agency.**

"Federal agency" means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

**§ 1-15.702-6 Grant.**

"Grant" means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Subpart 1-15.7 as applicable to grants in general also apply to federally sponsored cost reimbursement type of agreements performed by States or local governments, including contracts, subcontracts, and subgrants.

**§ 1-15.702-7 Grant program.**

"Grant program" means those activities and operations of the grantee which are necessary to carry out the purpose of the grant, including any portion of the program financed by the grantee.

**§ 1-15.702-8 Grantee.**

"Grantee" means the department or agency of State or local government which is responsible for administration of the grant.

**§ 1-15.702-9 Local unit.**

"Local unit" means any political subdivision of government below the State level.

**§ 1-15.702-10 Other State or local agencies.**

"Other State or local agencies" means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

**§ 1-15.702-11 Services.**

"Services," as used herein, means goods and facilities, as well as services.

**§ 1-15.702-12 Supporting services.**

"Supporting services" means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing services to the grant program. These services may

be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

**§ 1-15.703 Basic guidelines.**

**§ 1-15.703-1 Factors affecting allowability of costs.**

To be allowable under a grant program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out overall responsibilities of State or local governments;

(b) Be authorized or not prohibited under State or local laws or regulations;

(c) Conform to any limitations, or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items;

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part;

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(f) Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period; and

(g) Be net of all applicable credits.

**§ 1-15.703-2 Allocable costs.**

(a) A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular grant or cost objective under the principles provided for in this subpart may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in § 1-15.709.

**§ 1-15.703-3 Applicable credits.**

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: Purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use

or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

§ 1-15.704 Composition of cost.

§ 1-15.704-1 Total cost.

The total cost of a grant program is comprised of the allowable direct cost incident to its performance plus its allocable portion of allowable indirect costs, less applicable credits.

§ 1-15.704-2 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential, therefore, that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in §§ 1-15.705 through 1-15.709.

§ 1-15.705 Direct costs.

§ 1-15.705-1 General.

Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

§ 1-15.705-2 Application.

Typical direct costs chargeable to grant programs are:

- (a) Compensation of employees for the time and effort devoted specifically to the execution of grant programs;
- (b) Cost of materials acquired, consumed, or expended specifically for the purpose of the grant;
- (c) Equipment and other approved capital expenditures;
- (d) Other items of expense incurred specifically to carry out the grant agreement; and
- (e) Services furnished specifically for the grant program by other agencies, provided that such charges are consistent with criteria outlined in § 1-15.707 of these principles.

§ 1-15.706 Indirect costs.

§ 1-15.706-1 General.

Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services,

and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

§ 1-15.706-2 Grantee departmental indirect costs.

All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Subpart 1-15.7. In lieu of determining the actual amount of grantee departmental indirect costs allocable to a grant program, the following methods may be used:

(a) *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

(b) *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of a small self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

§ 1-15.706-3 Limitation on indirect costs.

(a) Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Subpart 1-15.7, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Subpart 1-15.7, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

§ 1-15.707 Cost incurred by agencies other than the grantee.

§ 1-15.707-1 General.

The cost of service provided by other agencies may only include allowable direct costs of the service plus a pro rata share of allowable supporting costs (§ 1-15.702-12) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

§ 1-15.707-2 Alternative methods of determining indirect cost.

In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used, provided only one method is used for a specific service during the fiscal year involved.

(a) *Standard indirect rate.* An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums, and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in § 1-15.706-2(a).

§ 1-15.708 Cost incurred by grantee department for others.

§ 1-15.708-1 General.

The principles provided in § 1-15.707 will also be used in determining the cost of services provided by the grantee department to another agency.

§ 1-15.709 Cost allocation plan.

§ 1-15.709-1 General.

A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

§ 1-15.709-2 Requirements.

The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

- (a) The nature and extent of services provided and their relevance to the federally sponsored programs;

(b) The items of expense to be included; and

(c) The methods to be used in distributing cost.

**§ 1-15.709-3 Approval of cost allocation plan.**

The allocation plan for a given cost area or objective will serve all the Federal agencies involved.

(a) At the State level, the Department of Health, Education, and Welfare will be responsible for the negotiation and approval of the cost allocation plans for central support services to grant programs. The approved plans will be accepted by other Federal agencies, unless an agency determines that the approved plan would result in significant inequitable or improper charges to programs for which it is responsible. The Department of Health, Education, and Welfare will collaborate with the other Federal agencies concerned in the development of guidance material concerning the cost allocation plan and in the negotiation and approval of the plan. It will also collaborate with the States concerning procedures for the administration of the cost allocation plan. The Department of Health, Education, and Welfare will be responsible for the audit of costs resulting from the cost allocation plan, the results of which will be accepted by other Federal agencies.

(b) At the grantee department level in a State, and for local governments, Federal agencies will work towards the objective of designating a single Federal agency, the one with predominant interest, which will have responsibility similar to that set forth in paragraph (a) of this section for the negotiation and approval of the cost allocation plan and for the audit of costs.

**§ 1-15.710 Standards for selected items of cost.**

Sections 1-15.711, 1-15.712, and 1-15.713 provide standards for determining the allowability of selected items of cost. These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in §§ 1-15.701 through 1-15.709.

**§ 1-15.711 Allowable costs.**

**§ 1-15.711-1 Accounting.**

The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes costs incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

**§ 1-15.711-2 Advertising.**

Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the grant program;

(b) Solicitation of bids for the procurement of goods and services required;

(c) Disposal of scrap or surplus materials acquired in the performance of the grant agreement; and

(d) Other purposes specifically provided for in the grant agreement.

**§ 1-15.711-3 Advisory councils.**

Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

**§ 1-15.711-4 Audit service.**

The cost of audit necessary for the administration and management of functions related to grant programs is allowable.

**§ 1-15.711-5 Bonding.**

Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

**§ 1-15.711-6 Budgeting.**

Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

**§ 1-15.711-7 Building lease management.**

The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

**§ 1-15.711-8 Central stores.**

The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

**§ 1-15.711-9 Communications.**

Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service, and similar expenses are allowable.

**§ 1-15.711-10 Compensation for personal services.**

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to, wages,

salaries, and supplementary compensation and benefits (§ 1-15.711-13). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) Is reasonable for the services rendered, (2) follows an appointment made in accordance with State or local government laws and rules, and which meets Federal merit system or other requirements, where applicable, and (3) is determined and supported as provided in paragraph (b) of this section. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and distribution of time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

**§ 1-15.711-11 Depreciation and use allowances.**

(a) Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowance or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6 $\frac{2}{3}$  percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated: *Provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

**§ 1-15.711-12 Disbursing service.**

The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

**§ 1-15.711-13 Employee fringe benefits.**

Costs identified under paragraphs (a) and (b) of this section are allowable to the extent that total compensation for employees is reasonable as defined in § 1-15.711-10.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) Provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

(b) Employee benefits in the form of employer's contributions or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like; provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

**§ 1-15.711-14 Employee morale, health, and welfare costs.**

The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, em-

ployee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

**§ 1-15.711-15 Exhibits.**

Costs of exhibits relating specifically to the grant programs are allowable.

**§ 1-15.711-16 Legal expenses.**

The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

**§ 1-15.711-17 Maintenance and repair.**

Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

**§ 1-15.711-18 Materials and supplies.**

The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

**§ 1-15.711-19 Memberships, subscriptions, and professional activities.**

(a) *Memberships.* The cost of membership in civic, business, technical, and professional organizations is allowable, provided: (1) The benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

(c) *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

**§ 1-15.711-20 Motor pools.**

The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed

rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

**§ 1-15.711-21 Payroll preparation.**

The cost of preparing payrolls and maintaining necessary related wage records is allowable.

**§ 1-15.711-22 Personnel administration.**

Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs are allowable.

**§ 1-15.711-23 Printing and reproduction.**

Costs for printing and reproduction services necessary for grant administration, including but not limited to, forms, reports, manuals, and informational literature are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

**§ 1-15.711-24 Procurement service.**

The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities, and services for grant programs is allowable.

**§ 1-15.711-25 Taxes.**

In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

**§ 1-15.711-26 Training and education.**

The cost of inservice training customarily provided for employee development which, directly or indirectly, benefits grant programs is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

**§ 1-15.711-27 Transportation.**

Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

**§ 1-15.711-28 Travel.**

Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two; provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available.

## RULES AND REGULATIONS

§ 1-15.712 Costs allowable with approval of grantor agency.

§ 1-15.712-1 Automatic data processing.

The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only with specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

§ 1-15.712-2 Building space and related facilities.

The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated in this § 1-15.712-2. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy without authorization of the grantor Federal agency.

(a) *Rental cost.* The rental cost of space in a privately owned building is allowable.

(b) *Maintenance and operation.* The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(c) *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value of useful life of the facilities (§ 1-15.712-3) are allowable when specifically approved by the grantor agency.

(d) *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in § 1-15.711-11.

(e) *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

§ 1-15.712-3 Capital expenditures.

The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

§ 1-15.712-4 Insurance and indemnification.

(a) Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

(c) Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

(d) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spillage, breakage, and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

(e) Indemnification includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in this § 1-15.712-4(d).

§ 1-15.712-5 Management studies.

The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

§ 1-15.712-6 Preagreement costs.

Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

§ 1-15.712-7 Professional services.

Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

§ 1-15.712-8 Proposal costs.

Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

§ 1-15.713 Unallowable costs.

§ 1-15.713-1 Bad debts.

Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

§ 1-15.713-2 Contingencies.

Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

§ 1-15.713-3 Contributions and donations.

Contributions and donations are unallowable.

§ 1-15.713-4 Entertainment.

Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

§ 1-15.713-5 Fines and penalties.

Costs resulting from violations of, or failure to comply with Federal, State, and local laws and regulations are unallowable.

§ 1-15.713-6 Governor's expenses.

The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

§ 1-15.713-7 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

§ 1-15.713-8 Legislative expenses.

Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

§ 1-15.713-9 Underrecovery of costs under grant agreements.

Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

(Sec. 205(c), 63 Stat. 300; 40 U.S.C. 386(o))

*Effective date.* This amendment is effective February 1, 1971, but may be observed earlier.

Dated: December 4, 1970.

ROBERT L. KUNZIG,  
Administrator of General Services.

[F.R. Doc. 70-16660; Filed, Dec. 10, 1970; 8:45 a.m.]

**Chapter 18—National Aeronautics and Space Administration**

**PART 18-1—GENERAL PROVISIONS**

Part 18-1 of Chapter 18, Title 41, Code of Federal Regulations is revised to read as follows:

**Subpart 18-1.1—Introduction**

- Sec. 18-1.100 Scope of subpart.
- 18-1.101 Purpose of this chapter.
- 18-1.102 Applicability.
- 18-1.103 Arrangement of chapter.
- 18-1.103-1 General plan.
- 18-1.103-5 Dating contract clauses.
- 18-1.103-6 Appendices and supplements.
- 18-1.104 Content of chapter.
- 18-1.107 Dissemination and effective date of the chapter and revision.
- 18-1.108 Field installation instructions and implementations of the NASA Procurement Regulation.
- 18-1.109 Deviations and other procurement publications.
- 18-1.109-1 Applicability.
- 18-1.109-2 Approval of deviations.
- 18-1.109-3 Requests for deviations.
- 18-1.109-50 Modification to existing contracts for new procurement.
- 18-1.110 Reports of contracts.
- 18-1.111 Reports of noncompetitive practices.
- 18-1.112 Relationship of ASPR and FPR.
- 18-1.113 Code of conduct.
- 18-1.113-1 Government personnel.
- 18-1.113-2 Organizational conflicts of interest.
- 18-1.114 Reporting of identical bids.
- 18-1.115 Noncollusive bids and proposals.

**Subpart 18-1.2—Definition of Terms**

- 18-1.201 Definitions.
- 18-1.202 Administrator.
- 18-1.203 Change order.
- 18-1.204 Construction contractor.
- 18-1.205 Contract modification.
- 18-1.206 Contracting officer.
- 18-1.207 Contracts.
- 18-1.208 Director of procurement.
- 18-1.209 Executive agency.
- 18-1.210 Federal agency.
- 18-1.211 Field installation.
- 18-1.212 Field procurement office.
- 18-1.213 Government instrumentality.
- 18-1.214 Head of an installation.
- 18-1.215 Head of the agency.
- 18-1.216 Includes.
- 18-1.217 Installation.
- 18-1.219 May.
- 18-1.220 NASA.
- 18-1.221 Negotiate and negotiation.
- 18-1.222 Procurement office, NASA Headquarters.
- 18-1.223 Possessions.
- 18-1.224 Procurement.
- 18-1.225 Procurement office.
- 18-1.226 Procurement officer.
- 18-1.229 Service contractor.
- 18-1.230 Shall.
- 18-1.231 Small business concern.
- 18-1.232 Supplemental agreement.
- 18-1.233 Supplies and property.
- 18-1.234 United States.
- 18-1.235 Automatic data processing equipment (ADPE).
- 18-1.236 Nonprofit organization.

**Subpart 18-1.3—General Policies**

- 18-1.300 Scope of subpart.
- 18-1.301 Methods of procurement.
- 18-1.302 Sources of supply.

- Sec. 18-1.302-1 Government agencies.
- 18-1.302-2 Sources outside the Government.
- 18-1.302-3 Production and research and development pools.
- 18-1.302-50 Contracts between NASA and Government employees.
- 18-1.302-51 Proposed subcontracts between NASA contractors and Government employees.
- 18-1.302-52 New sources of scientific and technical competence.
- 18-1.304 Restrictions on data and other information.
- 18-1.304-1 Selection of items involving proprietary data.
- 18-1.304-2 Treatment of technical data.
- 18-1.304-3 Technical and other data involved in formal advertising.
- 18-1.304-4 Privileged business information included in proposals.
- 18-1.305 Time of delivery or performance.
- 18-1.305-1 Scope.
- 18-1.305-2 General.
- 18-1.305-3 Terms.
- 18-1.305-4 Time of delivery clauses.
- 18-1.305-5 Research exploratory development, and advanced development.
- 18-1.306 Approval signature.
- 18-1.307 Priorities, allocations and allotments.
- 18-1.307-1 NASA program.
- 18-1.307-2 Required use of priorities, allocations, and allotments clause.
- 18-1.307-3 Inadequate response to solicitations.
- 18-1.308 Records of contract actions.
- 18-1.309 Solicitations for information or planning purposes.
- 18-1.310 Liquidated damages.
- 18-1.311 Buying in.
- 18-1.312 Voluntary refunds.
- 18-1.314 Disputes and appeals.
- 18-1.315 Procurement of jewel bearings.
- 18-1.316 Disclosure of contractor performance data to other government agencies and foreign governments.
- 18-1.317 Lease versus purchase criterion.
- 18-1.318 Contracts using annual funds.
- 18-1.319 Renegotiation performance reports.
- 18-1.319-1 Renegotiation board.
- 18-1.319-2 Renegotiation information for contract file.
- 18-1.319-3 Performance reports.
- 18-1.319-4 Procedures for handling request for performance reports.
- 18-1.320 Security requirements.
- 18-1.324 Warranties.
- 18-1.324-1 General.
- 18-1.324-2 Policy.
- 18-1.324-3 Use of a warranty.
- 18-1.324-4 Commercial warranties.
- 18-1.324-5 Scope of warranty clause (other than commercial warranty clause).
- 18-1.324-6 Pricing aspects of fixed-price incentive contract warranty provisions.
- 18-1.324-7 Example of warranty clause for fixed-price supply contracts.
- 18-1.324-8 Example of warranty clause for fixed-price services contracts.
- 18-1.324-9 Another example of warranty clause for fixed-price supply or services or research and development contracts (correction of deficiencies clause).
- 18-1.324-10 Example of warranty clause for fixed-price construction contracts.

- Sec. 18-1.327 Use of excess aluminum in national stockpile.
- 18-1.327-1 Government use program.
- 18-1.327-2 Contract clause.
- 18-1.327-3 Construction.
- 18-1.350 Nondiscrimination clause—government leases.
- 18-1.350-1 Policy.
- 18-1.350-2 Use of clause.
- 18-1.350-3 Lease amendments and renewals.
- 18-1.350-4 Invitation for bids or requests for proposals involving leases.
- 18-1.351 Procurement of potentially hazardous items.
- 18-1.352 Special considerations in research and development contracts.
- 18-1.353 Construction contracts—disclosure of Government estimate.
- 18-1.354 Procurements requiring immediate "on call" contractor performance.
- 18-1.355 Civil Rights Act of 1964—nondiscrimination in federally assisted programs.
- 18-1.356 Procurement request.
- 18-1.357 Procurement of liquid hydrogen.
- 18-1.358 Contractor financing by letter of credit.
- 18-1.359 Aircraft noise research and development programs.
- Subpart 18-1.4—Appointment and Authority of Contracting Officers
- 18-1.400 Scope of subpart.
- 18-1.401 Authority of contracting officers.
- 18-1.402 Requirements to be met before entering into contracts.
- 18-1.403 Selection, appointment, and termination of appointment of contracting officers.
- 18-1.403-1 Selection.
- 18-1.403-2 Appointment.
- 18-1.403-3 Termination of appointment.
- 18-1.403-4 Modification of authority.
- 18-1.403-5 Assignment of duties to contracting officers.
- Subpart 18-1.5—Contingent or Other Fees
- 18-1.500 Scope of subpart.
- 18-1.502 Applicability.
- 18-1.503 Covenant against contingent fees clause.
- 18-1.504 Improper influence.
- 18-1.505 General principles and standards applicable to the covenant.
- 18-1.505-1 Contingent character of the fee.
- 18-1.505-2 Exceptions to the prohibition of the covenant.
- 18-1.505-3 Bona fide employee.
- 18-1.505-4 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.
- 18-1.505-5 Fees for information.
- 18-1.506 Representation and agreement required from prospective contractors.
- 18-1.506-1 Interpretation of the representation.
- 18-1.507 Use of Standard Form 119.
- 18-1.507-1 Statement in lieu of form.
- 18-1.507-2 Exceptions.
- 18-1.507-50 Additional provision.
- 18-1.508 Enforcement.
- 18-1.508-1 Failure or refusal to furnish Standard Form 119.

Sec.	
18-1.508-2	Misrepresentations or violations of the covenant against contingent fees.
18-1.509	Preservation of records.
18-1.550	Responsibility for protecting information contained in completed Standard Form 119.
Subpart 18-1.6—Debarred, Ineligible, and Suspended Bidders	
18-1.600	Scope of subpart and definitions.
18-1.601	Establishment and maintenance of a list of firms or individuals debarred or ineligible.
18-1.601-1	General.
18-1.601-2	Information contained in NASA list.
18-1.601-3	Joint consolidated list.
18-1.601-4	Protection of lists.
18-1.601-50	Authority for making determinations.
18-1.601-51	Compliance with NASA list and joint consolidated list.
18-1.602	Limitation.
18-1.603	Grounds for listing and treatment to be accorded listed concerns.
18-1.604	Debarment of bidders.
18-1.604-1	Authority in NASA to debar firms and individuals.
18-1.604-2	Causes for debarment.
18-1.604-3	Period and scope of debarment.
18-1.604-4	Notice of debarment.
18-1.604-50	Reporting procedures.
18-1.605	Suspension of bidders.
18-1.605-1	General.
18-1.605-2	Authority in NASA to suspend firms or individuals.
18-1.605-3	Causes for suspension.
18-1.605-4	Period and scope of suspension.
18-1.605-5	Restrictions during period of suspension.
18-1.605-6	Notice of suspension.
18-1.605-50	Reporting procedures.
18-1.606	Limited debarment or suspension.
18-1.607	Interchange of debarment information.
Subpart 18-1.7—Small Business Concerns	
18-1.700	Scope of subpart.
18-1.701	Definitions.
18-1.701-1	Small business concern.
18-1.701-2	Established supplier.
18-1.701-3	Potential supplier.
18-1.701-4	Manufacturing industry employment size standards.
18-1.702	General policies.
18-1.703	Determination of status as small business concern.
18-1.704	Small business officials.
18-1.704-1	NASA Headquarters.
18-1.704-2	Installations.
18-1.704-3	Small business specialists.
18-1.705	Cooperation with the small business administration.
18-1.705-1	General.
18-1.705-2	SBA representatives.
18-1.705-3	Access to procurement information.
18-1.705-4	Certificates of competency.
18-1.705-5	Performance of contract by Small Business Administration.
18-1.706	Set-Asides for Small business.
18-1.706-1	General.
18-1.706-2	Contract authority.
18-1.706-3	Review, withdrawal, or modification of set-asides or set-aside proposals.
18-1.706-4	Reporting for Department of Commerce procurement synopsis.

Sec.	
18-1.706-5	Total set-asides.
18-1.706-6	Partial set-asides.
18-1.706-7	Automatic dissolution of set-asides.
18-1.706-50	Small business class set-aside for construction, repair, and alteration work.
18-1.706-51	Maintenance of records.
18-1.707	Subcontracting With Small Business Concerns.
18-1.707-1	General.
18-1.707-2	Small business subcontracting program.
18-1.707-3	Required clauses.
18-1.707-4	Responsibility for reviewing the subcontracting program.
18-1.707-5	Reports on NASA Form 524.
18-1.707-6	Subcontracting studies and surveys.
18-1.707-7	Small Business Administration review of agency records.
18-1.708	Purchases under Federal Supply Schedule contracts.
Subpart 18-1.8—Labor Surplus Area Concerns	
18-1.800	Scope of subpart.
18-1.801	Definitions.
18-1.801-1	Labor surplus area concern includes.
18-1.801-2	Labor surplus area.
18-1.801-3	Small business concern.
18-1.802	General policy.
18-1.803	Application of policy.
18-1.804	Partial set-asides for labor surplus area concerns.
18-1.804-1	General.
18-1.804-2	Set-asides procedures.
18-1.804-3	Withdrawal of set-asides.
18-1.804-4	Contract authority.
18-1.805	Subcontracting with labor surplus area concerns.
18-1.805-1	General policy.
18-1.805-2	Labor surplus area subcontracting program.
18-1.805-3	Required clauses.
18-1.805-4	Review of subcontracting program.
18-1.806	Depressed industries.
18-1.806-1	General.
18-1.806-2	Petroleum and petroleum products industry (Notification No. 58).

Subpart 18-1.9—Responsible Prospective Contractors	
18-1.900	Scope of subpart.
18-1.901	Applicability.
18-1.902	General policy.
18-1.903	Minimum standards for responsible prospective contractors.
18-1.903-1	General standards.
18-1.903-3	Special standards.
18-1.903-4	Ability to meet certain minimum standards.
18-1.904	Determinations of responsibility and nonresponsibility.
18-1.905	Procedures for determining responsibility of prospective contractors.
18-1.905-1	General.
18-1.905-2	When information will be obtained.
18-1.905-3	Sources of information.
18-1.905-4	Preaward surveys.
18-1.905-50	Procedures for requesting preaward surveys.
18-1.905-51	Conditions which normally do not require a preaward survey.
18-1.905-52	NASA conducted preaward surveys.
18-1.906	Subcontractor responsibility.
18-1.907	Disclosure of preaward data.

Subpart 18-1.10—Publicizing Procurement Actions	
Sec.	
18-1.1001	General policy.
18-1.1002	Dissemination of information relating to invitations for bids and requests for proposals.
18-1.1002-1	Availability of invitations for bids and requests for proposals.
18-1.1002-2	Limited availability of certain specifications, plans, and drawings.
18-1.1002-4	Displaying in public place.
18-1.1002-5	Information releases to newspapers and trade journals.
18-1.1003	Synopsis of proposed procurements.
18-1.1003-1	Department of Commerce synopsis.
18-1.1003-2	General requirements.
18-1.1003-3	Time of publicizing.
18-1.1003-4	Preinvitation notices.
18-1.1003-5	Publication of procurements of less than \$10,000.
18-1.1003-6	Synopsis of subcontract opportunities.
18-1.1003-7	Information regarding specifications, plans, and drawings.
18-1.1003-8	Responsibility of small business specialists.
18-1.1003-9	Preparation and transmittal.
18-1.1004	Disclosure of information prior to award.
18-1.1005	Publicizing award information.
18-1.1005-1	Synopsis of contract awards.
18-1.1006	Classification codes.
18-1.1006-1	Codes for services.
18-1.1006-2	Codes for supplies.
18-1.1007	Release of procurement information.
18-1.1007-1	Members of Congress.
18-1.1008	Paid advertisements in newspapers and trade journals.
18-1.1050	Furnishing additional procurement information to public.
18-1.1050-1	Policy.
18-1.1050-2	Procedures.
Subpart 18-1.12—Specifications, Plans, and Drawings	
18-1.1201	General.
18-1.1202	Mandatory specifications.
18-1.1203	Availability of specifications, standards, plans, and drawings.
18-1.1204	Packaging requirements.
18-1.1206	Purchase descriptions.
18-1.1206-1	General.
18-1.1206-2	Brand name or equal purchase descriptions.
18-1.1206-3	Invitation for bids—"brand name or equal" purchase descriptions.
18-1.1206-4	Bid evaluation and award—"brand name or equal" purchase descriptions.
18-1.1206-5	Procedure for negotiated procurements.
18-1.1207	Alternate articles or qualities.
18-1.1208	Procurement of used and reconditioned material and former Government surplus property.

Subpart 18-1.13—Transportation	
18-1.1300	Scope of subpart.
18-1.1301	General.
18-1.1302	Place of delivery.
18-1.1302-1	Shipments within the United States.
18-1.1302-2	Shipments from the United States for overseas delivery.
18-1.1302-3	Shipments originating outside the United States.
18-1.1303	Quantity analysis.

Sec.	
18-1.1304	Commodity description.
18-1.1305	Delivery terms.
18-1.1305-1	General.
18-1.1305-2	F.O.B. origin or destination.
18-1.1305-3	F.O.B. destination.
18-1.1305-4	F.O.B. origin.
18-1.1305-5	Destination unknown.
18-1.1306	Consignment and marking instructions.
18-1.1307	Scheduling of deliveries to permit consolidation of shipments.
18-1.1308	Transit privileges.
18-1.1309	Volume movements within the United States.
18-1.1310	Shipments requiring special handling.
18-1.1311	Mode of transportation.
18-1.1312	Transportation rates and related costs.
18-1.1312-1	Use in evaluation of bids and proposals.
18-1.1312-2	Source of transportation rates and related costs.
18-1.1313	Section 22 of the Interstate Commerce Act.
18-1.1313-1	General.
18-1.1313-2	Application to commercial bills of lading.
18-1.1313-3	Application to household goods.
18-1.1313-4	Penalty.
18-1.1314	Insurance.
18-1.1315	Loss and damage in-transit.
18-1.1316	Prepaid transportation charges.
18-1.1350	Charter of aircraft.

**Subpart 18-1.14—Transportation by Ocean Carriers**

18-1.1400	Scope.
18-1.1401	Definitions.
18-1.1402	Preference for private U.S. vessels.
18-1.1402-1	Policy.
18-1.1402-2	Shipment to which policy is not applicable.
18-1.1402-3	Procedures.
18-1.1410	Nonuse of foreign-flag vessels engaged in Cuban and North Vietnam trade.

**Subpart 18-1.15—Options**

18-1.1500	Scope of subpart.
18-1.1501	Definition of option.
18-1.1502	Applicability.
18-1.1503	Procedures.
18-1.1504	Exercise of options.
18-1.1505	Examples of option clauses.

**Subpart 18-1.50—Integration of Quality Requirements in NASA Procurements**

18-1.5000	Scope of subpart.
18-1.5001	Policy.
18-1.5002	Categories of procurements and their quality requirements.
18-1.5003	Responsibilities of NASA personnel.
18-1.5004	Procedures.

**Subpart 18-1.51—Integration of Reliability Requirements into NASA Procurements**

18-1.5100	Scope of subpart.
18-1.5101	Policy.
18-1.5102	Definitions.
18-1.5103	Application.
18-1.5104	Responsibilities.
18-1.5105	Procedures.
18-1.5106	Technical factors (requests for proposals and statements of work).

**Subpart 18-1.52—Safety and Health**

18-1.5200	Scope of subpart.
18-1.5201	Policy.

Sec.	
18-1.5202	Responsibility.
18-1.5203	Hazardous materials and operations.
18-1.5204	Contract provisions.

**AUTHORITY:** The provisions of this Part 18-1 issued under 42 U.S.C. 2473(b) (1).

**Subpart 18-1.1—Introduction**

**§ 18-1.100 Scope of subpart.**

This subpart sets forth (a) introductory information pertaining to chapter 18 (its purpose, applicability, content, and arrangement), and (b) instructions for amending, implementing, disseminating, and deviating from the chapter.

**§ 18-1.101 Purpose of this chapter.**

This chapter, issued by the Director of Procurement under authority delegated by the Administrator, establishes for the National Aeronautics and Space Administration (NASA) uniform policies and procedures relating to the procurement of property and services under the authority of the National Aeronautics and Space Act of 1958, as amended (Public Law 85-568; 42 U.S.C. 2451 et seq.), chapter 137, title 10, of the United States Code, or other statutory authority.

**§ 18-1.102 Applicability.**

This chapter applies to all purchases and contracts made by NASA, within or outside the United States, for the procurement of property or services which obligate appropriated funds, unless otherwise specified herein.

**§ 18-1.103 Arrangement of chapter.**

**§ 18-1.103-1 General plan.**

This chapter is divided into parts, each one of which deals with a separate aspect of procurement; and each part is further subdivided into subparts, sections, and paragraphs.

**§ 18-1.103-5 Dating contract clauses.**

Contract clauses in this chapter are identified by showing the month and year of issuance of the clause, as most recently revised, in parentheses immediately after the title, e.g., Examination of Records (October 1969). Where an alternative section is provided for insertion in a clause, the identifying date is shown in parentheses immediately following the text of the section. In contract forms using NASA PR clauses, each clause will be shown with its identifying date in the manner prescribed above, except that standard forms are not subject to this requirement. When an inconsistency exists between a contract clause published in this chapter and the same clause printed in a NASA contract form, the clause published in this chapter shall govern. When a clause to be used in a contract represents a deviation from this chapter, a date will not be shown.

**§ 18-1.103-6 Appendices and supplements.**

(a) Policies and instructions concerned with procurement which, while directive, are essentially procedural in nature, will be published as appendices to this chapter when applicable to, or re-

quired by, substantially all users of and subscribers to this chapter. Such policies and instructions will be published as supplements to this chapter when they are not applicable to, or required by, substantially all users of and subscribers to this chapter.

(b) The numbering of appendices and supplements shall follow generally § 18-1.103-6 except (1) appendices shall be identified by a capital letter and supplements by the letter "S" followed by the number of the supplement and such identification shall be the first portion of the section number, and (2) the pages shall be numbered consecutively.

**§ 18-1.104 Content of chapter.**

This chapter will contain policies and procedures relating to the procurement of property and services and is designed to achieve maximum uniformity throughout NASA. This chapter will be amended from time to time to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms, and improve the contracting process. Procurement personnel are encouraged to submit suggestions, based on operating experience, for improving and simplifying the procedures set forth in this chapter. Such suggestions should be submitted through the Procurement Officer to the Procurement Office, NASA Headquarters (Code KDP-1).

**§ 18-1.107 Dissemination and effective date of the chapter and revisions.**

(a) The NASA Procurement Regulation, and Revisions thereof, will be distributed directly to NASA installations by the U.S. Government Printing Office. The number of copies of the regulation, and revisions thereof, will be distributed on the basis of the requirements furnished by each Headquarters office, and NASA field installation, to the Procurement Office, NASA Headquarters (Code KDP-1).

(b) Heads of field installations will ensure that copies of the NASA Procurement Regulation are distributed to all interested activities and individuals within their installation.

(c) Copies of the NASA Procurement Regulation, and Revisions thereof, may be purchased by private concerns and individuals from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(d) Compliance with a revision to the NASA Procurement Regulation shall be permissive effective with the date of issuance thereof, and shall be mandatory effective 60 days thereafter, except (1) as may be otherwise prescribed in the revision, and (2) that procurements initiated after receipt of new or revised clauses should, to the maximum practicable extent, include such clauses prior to the mandatory date.

(e) Unless otherwise stated, invitations for bids which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if such amendment

would unduly delay the procurement action.

**§ 18-1.108 Field installation instructions and implementations of the NASA Procurement Regulation.**

(a) Heads of NASA field installations may implement the NASA Procurement Regulation by prescribing for their installation detailed procurement operating instructions, delegations of authority, and assignment of responsibilities which they deem essential for the efficient performance of their procurement function. Such instructions shall:

(1) Be consistent with the policies and procedures contained in this chapter and the NASA Procurement Regulation Directives;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this chapter;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this chapter.

(b) The head of each NASA installation shall furnish the Procurement Office, NASA Headquarters (Code KDP-1) three copies and the cognizant Institutional Director one copy of:

(1) The basic publication prescribing the procurement operating instructions for his field installation; and

(2) Each change, revision, or amendment to such instructions, at the time of issuance.

**§ 18-1.109 Deviations and other procurement publications.**

**§ 18-1.109-1 Applicability.**

A deviation shall be considered to be any of the following:

(a) When a prescribed contract clause is set forth verbatim in NASA procurement regulations, use of a contract clause or a schedule provision covering the same subject matter which varies from, or has the effect of altering, the prescribed NASA clause, or changing its application;

(b) When a contract clause is set forth in NASA procurement regulations but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the NASA procurement regulation clause or related coverage of the subject matter;

(c) Omission of any mandatory contract clause constitutes a deviation;

(d) When a Standard, NASA, or other form is prescribed by NASA procurement regulations, use of any other form for the same purpose;

(e) Alteration of a Standard or NASA form except as authorized by NASA procurement regulations;

(f) When limitations are imposed by NASA procurement regulations upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, the imposition of lesser or greater limitations; or

(g) When a policy, procedure, method, or practice of conducting procurement actions is prescribed in NASA procurement regulations, any policy, procedure, method, or practice inconsistent therewith.

**§ 18-1.109-2 Approval of deviations.**

Deviations from NASA procurement regulations will be authorized only when essential to effect necessary procurement or where special circumstances make such deviations clearly in the best interest of the Government. Such deviations will be approved only by the Director of Procurement, or his authorized representative.

**§ 18-1.109-3 Requests for deviations.**

Requests for authority to deviate from the provisions of this chapter and other procurement publications shall be submitted to the Procurement Office, NASA Headquarters (Code KDP-1). Such requests shall be signed by the Procurement Officer or his deputy. Such requests shall be submitted as far in advance as the exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(a) Identification of the NASA procurement regulation requirement from which a deviation is sought;

(b) A full description of the deviation and the circumstances in which it will be used;

(c) A description of the intended effect of the deviation;

(d) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request;

(e) The name of the contractor and identification of the contract affected, including the dollar value; and

(f) Detailed reasons supporting the request, including any pertinent background information which will contribute to a fuller understanding of the deviation sought.

**§ 18-1.109-50 Modification to existing contracts for new procurement.**

(a) When an existing contract is modified to add new procurement, approval of the deviations previously granted for the existing contract must be obtained for the modification as though the modification were a new contract. New procurement for the purpose of this section shall be considered any action which requires the citation of an authority to negotiate.

(b) An information copy of each request for deviation shall be furnished the cognizant Program Director.

**§ 18-1.110 Reports of contracts.**

(a) Special reports concerning NASA contracts prescribed by NASA Headquarters are designed to meet statutory and other congressional requirements, requirements of other Federal agencies, and to provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of compliance with prescribed policy.

(b) Basic recurring reports are set forth in Subpart 18-16.9. The statistics furnished in these reports are also used in the preparation of reports furnished to the President, the Congress, other Federal agencies, and management within NASA. The accuracy, completeness, and timeliness of all reports are

fully dependent on careful preparation and prompt submission.

**§ 18-1.111 Reports of noncompetitive practices.**

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Administrator, NASA, or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General of the United States for appropriate action (see § 18-2.404-1(b)(6)). Similarly, evidence of such violations in negotiated procurements will be referred to the Attorney General (see § 18-3.215-2). Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, or similar actions.

(b) When bids or proposals are received and, in the opinion of the contracting officer, are indicative of possible antitrust violations, he shall report such circumstances to the General Counsel, NASA Headquarters, through the Procurement Office (Code KDP-1). Reports of such bids or proposals should not be submitted automatically, but only when there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth:

(1) The noncompetitive pattern or situation under consideration;

(2) Purchase experience in the same product or service for a reasonable period of time (1 or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstracts of bids;

(3) Community of financial interest among bidders, insofar as it is known;

(4) The extent, if any, to which specification requirements or patents restrict competition;

(5) Information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

(6) Any other information considered pertinent.

(c) Evidence of noncompetitive bid practices which, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States.

(d) The reports required by this section are separate and apart from the reporting requirement contained in § 18-1.114.

**§ 18-1.112 Relationship to ASPR and FPR.**

(a) Since NASA is governed by the same procurement law as the Department of Defense (Chapter 137, Title 10, U.S.C.), and both agencies deal to a considerable extent with the same segment

of industry, it is NASA policy to prescribe procurement regulations which, to the maximum practicable extent, are consistent with policies and procedures adopted by the Department of Defense in the ASPR.

(b) NASA and the General Services Administration have also reached agreement concerning the relationship between the FPR and the NASA Procurement Regulation. NASA has agreed to participate in the publication program established by the FPR system. Therefore, the NASA Procurement Regulation will be published in Chapter 18 of Title 41 of the Code of Federal Regulations and will utilize the numbering system employed by the FPR.

§ 18-1.113 Code of conduct.

§ 18-1.113-1 Government personnel.

(a) A number of Federal statutes prohibit certain acts by Government personnel and special Government employees as defined in 18 U.S.C. 202 in relation to procurement activities for the Government. Among these statutes are the following: (1) 18 U.S.C. 201 relating to bribes in order to secure a Government contract; (2) 18 U.S.C. 203 relating to compensation for services rendered in connection with any proceeding or claim in which the United States has an interest; (3) 18 U.S.C. 205 relating to acting as an agent or attorney for prosecuting any claim against the United States; (4) 18 U.S.C. 208 relating to transacting business as an officer or agent of the United States with firms of which such officer or agent, his spouse, minor child, or partner is an official or in which he has a pecuniary interest; and (5) of 18 U.S.C. 209 relating to compensation from non-Government sources in connection with Government services. These statutory prohibitions, and their application to NASA personnel, are discussed in NASA Management Instruction 1910.1 "Conflict of Interest Statutes", NASA Management Instruction 1930.1 "Gifts and Gratuities", and NASA Management Instruction 1940.1 "Financial Interests and Investments". All NASA personnel involved in procurement actions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

(b) Aside from such statutory prohibitions, as set forth in paragraph (a) of this section, procurement personnel shall maintain the highest standards of conduct in connection with dealings on behalf of the Government. Such conduct must at all times be beyond reproach and must be such that each individual involved in NASA procurement activities would have no reticence in making a full public disclosure of all actions taken in connection with such activities.

§ 18-1.113-2 Organizational conflicts of interest.

(a) NASA Management Instruction 5101.19, dated July 1, 1968, Subject:

Avoiding Conflict-of-Interest Situations in the Placing of NASA Contracts, is set forth in this chapter as Appendix G.

(b) Appendix G provides guidelines for avoiding situations where the placing of a contract may give rise to conflicts of interest and describes examples of various organizational conflicts of interest which might come into being and methods for avoidance of such conflicts. It provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. All prospective contractors, in such situations, will be advised of the extent of applicability of these rules by a notice in solicitations and by a clause in resulting contracts. Such clause shall spell out the specific extent of any future restrictions on the contractor which are imposed by the contract. A standard form of notice for use in solicitations or contract clause is not prescribed in this chapter since such notices in solicitations and contract clauses must be adapted to apply the principle of these rules to the specific facts of each contractual situation. The rules for avoidance of organizational conflict, as such, do not impose any contractual obligation on the contractor. Such obligation is imposed only by the contract clause designed to carry out such rules. The contracting officer shall not impose restrictions on any contractor in reliance on these rules in the absence of a specific contractual agreement with the contractor, without the approval of the head of the installation. Contracting officers will forward to the Procurement Office, NASA Headquarters (Code KDP-1) a copy of each notice included in solicitations and clause incorporated in contracts.

§ 18-1.114 Reporting of identical bids.

(a) *General.* Executive Order 10936 dated April 24, 1961, as implemented by the Department of Justice, requires a report to be submitted to the Attorney General on each formally advertised procurement (including small business restricted advertising) over \$10,000 which involves identical bids.

(b) *Definitions.* (1) Identical bids are two or more bids for the same line item which:

(i) Are identical on their face (regardless of such evaluation factors as discount, transportation, etc.) either as to unit price or total line item amount; or

(ii) Are identical as evaluated as to either unit price or total line item amount.

(2) The term "line item" means each object of procurement specified in an invitation for bids which, under the terms of the invitation, is susceptible to a separate contract award. The reporting requirements herein established for line items are applicable to invitations calling for line item bidding, even though such bids contain qualifying or restrictive limitations on award (e.g., all-or-none bids; lump sum awards in the case of construction contracts; award on one item conditioned on award of other items).

(c) *Information to be obtained from bidders.* Each invitation for bids for a procurement estimated to exceed \$10,000 will include substantially the following:

PARENT COMPANY AND EMPLOYER IDENTIFICATION NUMBER (MARCH 1963)

(a) Bidder represents that he  is,  is not, owned or controlled by a parent company. For this purpose a parent company is defined as one which either owns or controls the activities and basic business policies of the bidder. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company such ownership is not required; if another company is able to formulate, determine or veto basic business policy decisions of the bidder, such other company is considered the parent of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

(b) If the bidder is owned or controlled by a parent company, insert in the space below the name and main office of the parent company.

-----  
(Name)  
-----

-----  
(Address)  
-----

(c) Bidder will provide in the applicable space below, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Identification Number as used on Federal Tax Return); or, if he has a parent company the E.I. No. of his parent company.  
Bidder's E.I. No.-----  
Parent Company's E.I. No.-----

The information required by this paragraph (c) will be included on reports of identical bids. If identical bids are involved and bidders fail to provide this information, one inquiry will be made to obtain such information. Failure on the part of bidders to provide the above information on invitation for bids shall be indicated on all reports of identical bids, but shall not be considered a basis for rejection of bids.

(d) *Reportable bids.* All identical bids shall be reported when the bid value of all line items covered by the invitation for bids exceeds \$10,000 (based on the apparent low bid for each line item), regardless of whether:

- (1) They were the low bids;
- (2) Award is made on the line item;
- (3) The invitation was canceled; or
- (4) Any other disposition was made subsequent to public opening of the bids.

(e) *Conditions under which identical bids are not reportable.* Reports shall not be submitted when:

(1) Bids are received only from foreign sources on invitations for bids involving delivery and performance outside the United States, its possessions, or Puerto Rico;

(2) There is no line item on which the apparent low bids exceed \$2,500 (line item evaluation computations beyond those normally made to determine low bidders are not required); or

(3) No identical bids are discovered in the normal process of evaluating bids for award and no identical bids are apparent on the face of the bid.

(f) *Information to be reported.* When an invitation results in the submission of

## RULES AND REGULATIONS

identical bids to be reported under paragraph (d) of this section, a report shall be submitted showing the entire bid proceeding for each line item in which identical bids are received. A copy of the invitation for bids and a copy of the completed abstract of all bids received shall be filed with the report, except that an abstract will not be furnished if the number of line items on the invitation for bids exceeds 100. In such case, the report shall be annotated to indicate both the number of line items and the total number of bidders on the invitation.

(g) *Submission of reports.* (1) Identical Bid reports shall be submitted on Department of Justice Form DJ-1500 (Federal Stock No. 7540-823-7870), available from General Services Administration stores and depots. Instructions for completing this form are printed as the cover sheet of each pad of the forms. Reports shall be made within 20 days following the final disposition of all bids received in response to the invitation for bids involved. Two completed copies of the report, with attachments, and of the completed bid, shall be sent directly to the Attorney General (Code AT-IBR), Washington, D.C. 20530. One copy of the completed report (including abstract of bids, if appropriate) shall be retained by the reporting installation.

(2) This reporting requirement is in addition to and will not be deemed a substitute for the reports of noncompetitive practices required by § 18-1.111.

#### § 18-1.115 Noncollusive bids and proposals.

(a) In order to promote full and free competition for Government contracts, the following certification shall be included in all (1) invitations for bids and (2) requests for proposals or quotations (other than for small purchases made in accordance with Subpart 18-3.6 of this chapter and other than requests for technical proposals in connection with two-step formal advertising) involving firm fixed-price contracts and fixed-price contracts with escalation:

##### CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (JUNE 1964)

(a) By submission of this bid or proposal, each bidder or offeror certifies, and in the case of a joint bid or proposal, each party thereto certifies as to his own organization, that in connection with this procurement:

(1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or offeror or with any competitor;

(2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) no attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) he is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a) (1) through (3) above; or

(2) (a) he is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a) (1) through (3) above, and as their agent does hereby so certify; and (b) he has not participated, and will not participate, in any action contrary to (a) (1) through (3) above.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a) (1), (3), or (b) above has been deleted or modified. Where (a) (2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and the Administrator, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

(b) The fact that a firm (1) has published price lists, rates, or tariffs covering items being procured by the Government, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to commercial customers at the same prices being offered the Government does not constitute, without more, a disclosure within the meaning of paragraph (a) (2) of the certificate.

(c) It is not required that a separate written authorization be given to the signer of the bid or proposal for each procurement involved where the signer makes the certification provided in paragraph (b) (2) of the certificate: *Provided*, That with respect to any blanket authorization given, (1) the procurement to which the certificate applies is clearly within the scope of such authorization, and (2) the person giving such authorization is the person responsible within the bidder's or offeror's organization for the decision as to the prices being bid or offered at the time the certificate is made in a particular procurement.

(d) After the execution of an initial certificate and the award of a contract in connection therewith, the contractor need not submit additional certificates in connection with proposals submitted on "work orders" or similar ordering instruments issued pursuant to the terms of that contract, where the Government's requirements cannot be met from another source.

(e) The authority to make the determination described in paragraph (d) of the above certification shall be exercised by the head of the installation or his deputy.

(f) Where a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with § 18-1.111. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see §§ 18-2.404-1(b) (6) and 18-3.215-2.

#### Subpart 18-1.2—Definition of Terms

##### § 18-1.201 Definitions.

As used throughout this chapter, the words and terms defined in this subpart shall have the meanings set forth below, unless (a) the context in which they are used clearly requires a different meaning or (b) a different definition is prescribed for a particular part or portion thereof.

##### § 18-1.202 Administrator.

"Administrator" means the Administrator or Deputy Administrator of NASA.

##### § 18-1.203 Change order.

"Change order" means a written order signed by the contracting officer, directing the contractor to make changes which the changes clause of the contract authorizes the contracting officer to order without the consent of the contractor (see § 18-16.103).

##### § 18-1.204 Construction contractor.

"Construction contractor" means a person (or firm) who, before being awarded a contract, satisfies the contracting officer that he qualifies as one:

(a) Who owns, operates, or maintains a place of business regularly engaged in the construction, alteration, or repair of buildings, structures, communication facilities, or other engineering projects, including the furnishing and installing of necessary equipment; or

(b) Who, if newly entering into a construction activity, has made all necessary prior arrangements for personnel, construction equipment, and required licenses to perform construction work.

##### § 18-1.205 Contract modification.

"Contract modification" means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (a) bilateral actions such as supplemental agreements, and (b) unilateral actions such as change orders, administrative changes, notices of termination, and notices of the exercise of a contract option (see § 18-16.103).

##### § 18-1.206 Contracting officer.

"Contracting Officer" means any person who, by appointment in accordance with procedures prescribed by this chapter, is currently a contracting officer (see Subpart 18-1.4) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or with any part of such authority. The term

also includes the authorized representative of the contracting officer acting within the limits of his authority. For convenience of expression, a contracting officer, designated to perform specific duties relating to contract termination as his primary function (see § 18-8.201), may be referred to as the termination contracting officer (TCO). It is recognized that a single contracting officer may be responsible for duties in any or all procurement areas, and reference in this chapter to TCO does not of itself restrict in any way a contracting officer in the performance of any duty properly assigned.

§ 18-1.207 Contracts.

"Contracts" means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

§ 18-1.208 Director of procurement.

"Director of Procurement" means the Director of the Procurement Office, Office of Industry Affairs, NASA Headquarters (Code: KD).

§ 18-1.209 Executive agency.

"Executive agency" means any executive department or any independent establishment in the Executive Branch of the Government, including any wholly owned Government corporation, the National Aeronautics and Space Administration, and the Departments of the Army, Navy, and Air Force.

§ 18-1.210 Federal agency.

"Federal agency" means any executive agency or any establishment in the Legislative or Judicial Branches of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

§ 18-1.211 Field installation.

"Field installation" means Ames Research Center, Electronics Research Center, Flight Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Manned Spacecraft Center, George C. Marshall Space Flight Center, NASA Pasadena Office, Wallops Station, and any other field installation hereafter established by NASA.

§ 18-1.212 Field procurement office.

"Field procurement office" means any NASA procurement office other than procurement offices at NASA Headquarters.

§ 18-1.213 Government instrumentality.

"Government instrumentality" means any of the following:

- (a) An instrumentality of the U.S. Government;
- (b) An agency or instrumentality of a State or local government, possession, or Puerto Rico;

(c) an agency or instrumentality of a foreign government.

§ 18-1.214 Head of the installation.

"Head of the installation" means the Director (or other Head) of a field installation; the Director, Headquarters Administration Office (Code DEH), and the Manager, AEC-NASA Space Nuclear Propulsion Office.

§ 18-1.215 Head of the agency.

"Head of the agency" means the Administrator or Deputy Administrator of NASA.

§ 18-1.216 Includes.

"Includes" means "includes but is not limited to."

§ 18-1.217 Installation.

"Installation" means NASA Headquarters (including the AEC-NASA Space Nuclear Propulsion Office, Germantown, Md.) and field installations.

§ 18-1.219 May.

"May" is permissive. However, the words "no person may . . ." means that no person is required, authorized, or permitted to do the act prescribed.

§ 18-1.220 NASA.

"NASA" means the National Aeronautics and Space Administration.

§ 18-1.221 Negotiate and negotiation.

"Negotiate and negotiation," when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

§ 18-1.222 Procurement office, NASA Headquarters.

Procurement Office, NASA Headquarters means the Procurement Office, Office of Industry Affairs, NASA Headquarters (Code KD).

§ 18-1.223 Possessions.

"Possessions" in a geographic sense includes the Virgin Islands, the Canal Zone, Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands but does not include Puerto Rico, leased bases, occupied Japanese islands, or trust territories.

§ 18-1.224 Procurement.

"Procurement" includes purchasing, renting, leasing, or otherwise obtaining supplies or services. It also includes all functions that pertain to the obtaining of supplies and services, including description but not determination of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

§ 18-1.225 Procurement office.

"Procurement office" means the offices at NASA Headquarters and NASA field installations charged with the responsibility for making and administering purchases and contracts.

§ 18-1.226 Procurement officer.

"Procurement officer" means the head of a procurement office.

§ 18-1.229 Service contractor.

"Service contractor" means a person (or firm) who, before being awarded a contract, satisfies the contracting officer that he qualifies as one:

- (a) Who owns, operates, or maintains a place of business regularly engaged in performing nonpersonal services, such as the repair, maintenance, or rebuilding of personal property; the packing, crating, or moving of material; the operation of equipment or facilities; the rental of equipment or facilities; or the performance of administrative, professional, or technical functions; or
- (b) Who, if newly entering into a service activity, has made all necessary prior arrangements for personnel, service equipment, and required licenses to perform services.

§ 18-1.230 Shall.

"Shall" is imperative.

§ 18-1.231 Small business concern.

See § 18-1.701-1.

§ 18-1.232 Supplemental agreement.

"Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties. (See § 18-16.103.)

§ 18-1.233 Supplies and property.

(a) "Supplies" or "Property" means all property except land or interests in land. It includes public works, buildings, and facilities; aircraft, missiles, satellites, and other aeronautical and space vehicles, together with related equipment, devices, components, and parts; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this chapter is synonymous with "property" as described in 10 U.S.C. 2303(b).

(b) The terms "supplies" and "property" are used interchangeably in this chapter unless otherwise specifically provided. These terms as used in this chapter have the same meaning as the term "supplies" used in ASPR. The term "personal property and nonpersonal services" as used in the FPR have the same meaning as "supplies and services" or "property and services" used herein.

§ 18-1.234 United States.

"United States," when used in a geographic sense, means the 50 States and the District of Columbia.

§ 18-1.235 Automatic data processing equipment (ADPE).

(a) Digital and Analog Computer components and systems, irrespective of type of use, size, capacity, or price (FSC 7440);

(b) All peripheral, auxiliary, and accessorial equipment used in support of Digital and/or Analog Computers, either cable connected, or "self standing" and whether selected or acquired with the computers or separately (FSC 7410 or 7440);

(c) Punched Card Machines (PCM) and systems used in conjunction with or independently of Digital or Analog Computers (FSC 7410); and

(d) Digital and Analog Terminal and Conversion equipment that is acquired solely or primarily for use with a system which employs a Computer or Punched Card Machines (FSC 7410 or 7440).

§ 18-1.236 Nonprofit organization.

"Nonprofit organization" means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Subpart 18-1.3—General Policies

§ 18-1.300 Scope of subpart.

This subpart sets forth general policies with respect to the procurement of supplies and services by formal advertising and by negotiation.

§ 18-1.301 Methods of procurement.

(a) *Competition.* All procurements, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

(b) *Formal advertising.* Procurements shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be effected in accordance with the detailed requirements and procedures set forth in Part 18-2 of this chapter.

(c) *Negotiation.* If the use of formal advertising is not feasible and practicable, procurements may be negotiated in accordance with the detailed requirements and procedures set forth in Part 18-3 of this chapter.

§ 18-1.302 Sources of supply.

§ 18-1.302-1 Government agencies.

Prior to taking procurement action, in accordance with this chapter, installations shall insure that they comply with applicable laws and regulations relative to obtaining supplies or services from Government sources and from contracts of other Government agencies. To the extent practicable, supplies shall be obtained from surplus property in the hands of disposal agencies and surplus or excess stocks in the hands of any Government agency. Releasable industrial equipment which is available from the Department of Defense reserves should be utilized to the extent feasible (see Subpart 18-13.50).

§ 18-1.302-2 Sources outside the Government.

Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the types of supplies and services necessary to meet NASA's requirements.

§ 18-1.302-3 Production and research and development pools.

(a) *Description.* A production or research and development pool is a group of concerns (1) who have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services or for research and development for Defense use, or to effectuate the purposes of the Small Business Act; (2) who have entered into a pool agreement governing their organization, relationship, and procedure; and (3) whose agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), 50 U.S.C. App. 2158, or in accordance with section 9(d) or 11 of the Small Business Act, 15 U.S.C. 631-647 (Small Business Pools). Pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act (see Subpart 18-12.6).

(b) *General rule.* Except as provided in this § 18-1.302-3, a pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a pool. In ascertaining the status of a group representing itself as a pool, contracting officers may rely on a copy of the Small Business Administration (SBA) or Office of Emergency Preparedness (OEP) notification of approval of the pool. If the contracting officer has any questions as to whether a given pool has been approved, he shall consult the regional office of the SBA. The Director of Procurement will expeditiously disseminate to field installations information received from SBA or OEP concerning the approval of production and research and development pools. In any case where the award of a contract to a group representing itself as a production or research and development pool is contemplated, and the contracting officer does not have data available as to the status of the pool, the group shall be requested to furnish to the contracting officer the following:

(1) A copy of the SBA or OEP notification of approval of the pool; and

(2) A list of the member companies of the pool and a statement regarding the type of organization and plan of operation of the pool.

(d) *Contracting with pools.* (1) A bid or proposal of a pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except for contracts to be awarded to incorporated pools, the contracting officer shall, prior to award to a pool, require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of

attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in his own name and not on behalf of a pool, the pool agreement shall be a factor to be considered in determining the pool member's responsibility, pursuant to Subpart 18-1.9.

§ 18-1.302-50 Contracts between NASA and Government employees.

(a) Procurement contracts between the Government and its employees or business organizations substantially owned or controlled by Government employees will not knowingly be entered into, except in those cases in which the needs of the Government cannot reasonably be otherwise supplied. The specific approval of the Director of Procurement must be obtained for any such contract.

(b) Surplus personal property shall not be sold to persons known to be officers or employees of the Federal Government, except as specifically authorized by the Director of Procurement.

§ 18-1.302-51 Proposed subcontracts between NASA contractors and Government employees.

In the approval of subcontracts under NASA prime contracts, NASA contracting officers shall consider the policy restrictions of § 18-1.302-50 to apply to subcontracts.

§ 18-1.302-52 New sources of scientific and technical competence.

As a Government agency whose mission calls for substantial Federal expenditures and use of substantial national resources, NASA has a strong interest in assisting in the accomplishment of collateral national economic goals within the framework of applicable statutory and administrative authority in such manner as will not impair program effectiveness. Utilization and the accompanying development of the potential of all geographical regions in the space program will effectively contribute to achieving national goals. To advance the further development of competence and capacity of sources, it is NASA's policy to encourage the placing of subcontracts over wider geographic areas. To carry out these objectives, the following clause shall be inserted in all research and development contracts of \$500,000 and over to be performed within the United States.

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM (JUNE 1968)

(a) It is the policy of the National Aeronautics and Space Administration to advance

a broad participation by all geographic regions in filling the scientific, technical, research and development, and other needs of the aerospace program.

(b) The Contractor agrees to use his best efforts to solicit subcontract sources on the broadest feasible geographic basis, consistent with efficient contract performance, and without impairment of program effectiveness or increase in program cost.

(c) The Contractor further agrees to insert this clause in all subcontracts of \$100,000 and over.

**§ 18-1.304 Restrictions on data and other information.**

**§ 18-1.304-1 Selection of items involving proprietary data.**

In some cases the procurement of an item would involve proprietary data (see § 18-9.201(b)) or other factors which would restrict sources of procurement or limit competition, but alternative items may be procured which would meet the needs of NASA. In such cases, consideration will be given, in selecting the item to be procured, to the relative advantages for aeronautical and space purposes of the item which involves such proprietary data or other factors as against the disadvantages of a restricted source of supply and possibly increased cost to the Government because of lack of competition. However, when a particular item best meets the needs of NASA, the contracting officer will not refrain from procuring the item solely because it would involve such restrictions or limitations.

**§ 18-1.304-2 Treatment of technical data.**

(a) *General.* Technical data (such as plans, designs, suggestions, improvements or concepts) acquired by NASA may have been obtained under conditions which restrict NASA's right to use the data. Therefore, care must be taken when considering the use of technical data to assure that NASA has sufficient rights to use the data in the manner desired. One of the principal ways in which NASA receives technical data is by means of proposals. NASA has a continuing interest in receiving and evaluating proposals which are pertinent to its potential needs in carrying out its objectives and missions. Some proposals are offered and received under conditions which may prevent NASA from using the technical data contained therein other than for evaluation purposes. Proposals received by NASA are of two types—solicited and unsolicited.

(b) *Definitions.*—(1) *Unsolicited proposal.* An unsolicited proposal is a written offer to perform work which does not result from (i) a formal written request for proposals or quotations, or (ii) an oral quotation solicited under the small purchase procedures (§ 18-3.604-2).

(2) *Solicited proposal.* A solicited proposal is a written offer to perform work which results from (i) a formal written request for proposals or quotations, or (ii) an oral quotation solicited under the small purchase procedures (§ 18-3.604-2) by NASA.

(c) *Policy for unsolicited proposals.* It is the policy of NASA to use technical

data included in unsolicited proposals for evaluation purposes only. However, due to the administrative problems involved in handling the large number of unsolicited proposals received, the Government cannot assume liability for disclosure or use of such technical data unless it is marked by the submitter in accordance with the following requirements. Each proposal containing technical data, which the submitter intends to be used by NASA for evaluation purposes only, should be marked on the cover sheet with the following legend and shall specify the pages of the proposal to be restricted in accordance with the conditions of the legend:

Technical data contained in pages ----- of this proposal shall not be used or disclosed, except for evaluation purposes: *Provided*, That if a contract or grant is awarded to this submitter as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract or grant. This restriction does not limit the Government's right to use or disclose technical data obtained from another source without restriction (October 1969).

Contracting officers and other Government personnel shall not refuse to consider any proposal merely because the proposal is restrictively marked. Proposals, or portions thereof, so marked shall be used only for evaluation and shall not otherwise be used or disclosed without the written permission of the submitter except under the conditions provided in the legend. In the event an unsolicited proposal is submitted with more restrictive conditions than that provided in the legend above, NASA may be unable to consider it, in which case the submitted should be so advised, see § 18-1.304-2(f) (2).

(d) *Policy for solicited proposals.* NASA recognizes that requests for proposals may require the offeror, including his subcontractors, if any, to submit technical data which the offeror or his subcontractor does not want used or disclosed for any purpose other than evaluation of the proposal. Each proposal containing technical data which the offeror or his proposed subcontractors desires to restrict shall be marked on the cover sheet with the legend set forth in paragraph (c) of this section, specifying the pages of the proposal to be restricted in accordance with the conditions of the legend. Proposals, or portions thereof, so marked shall be used only for evaluation and shall not otherwise be used or disclosed without the written permission of the submitter except under the conditions provided in the legend. NASA assumes no liability for disclosure or use of unmarked technical data in solicited proposals and may use or disclose the data for any purpose. See § 18-3.501(b) (45) for language to be inserted in the RFP.

(e) *NASA notice for handling proposals.* In order to assure that both unsolicited and solicited proposals are handled in accordance with the policies set forth in paragraphs (c) and (d) of this section, the following notice shall be affixed

to each unsolicited proposal upon receipt by NASA, and to each solicited proposal if the solicited proposal is to be disclosed outside the Government for NASA evaluation purposes in accordance with the policies and procedures set forth in paragraph (f) of this section. Application of the following notice in no way alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose technical data or business information.

**NASA NOTICE FOR HANDLING PROPOSALS  
(OCTOBER 1969)**

This proposal shall be used, or duplicated, only for NASA evaluation purposes and this notice shall be applied to any reproduction or abstract thereof.

Disclosure of this proposal outside the Government for NASA evaluation purposes shall not be made unless the policy and procedures prescribed by NASA Procurement Regulation 1.304-2(f), including the requirements for approval and for an arrangement with the outside evaluator prior to disclosure, are followed.

The restrictions contained in this notice do not apply to technical data or business information obtained from another source without restriction.

(f) *Disclosure of solicited and unsolicited proposals outside Government—*

(1) *Policy.* It is the policy of NASA to have proposals evaluated by the most competent technical and management sources available in NASA and the Jet Propulsion Laboratory (JPL), see § 18-3.804-4. Proposals being considered by a Source Evaluation Board will be handled in accordance with paragraph 305 of the Source Evaluation Board Manual (NPC 402). Proposals being considered for flight experiments by the Space Science and Applications Steering Committee and the Manned Space Flight Experiments Board will be handled in accordance with NMI 7100.1, "Conduct of Space Science Programs—Selection and Support of Scientific Investigations and Investigators," dated April 29, 1964. However, in processing a proposal for evaluation by Board, Committee, or otherwise, NASA may find in some instances that it is necessary to disclose a proposal outside the Government to meet its evaluation needs. Such outside evaluation may be made, provided the requirements in subparagraphs (2) and (3) of this paragraph are met.

(2) *Approval.* Decisions in NASA Headquarters to disclose solicited proposals outside the Government (or JPL) for NASA evaluation purposes shall be made by the Director, Headquarters Contracts Division, and at NASA field installations by the Procurement Officer. The decision to disclose either a solicited or unsolicited proposal outside the Government (or JPL) for the purpose of obtaining a NASA evaluation shall take into consideration the NASA Rules for the Avoidance of Organizational Conflicts of Interest (Appendix G) and the competitive relationship between the originator of the proposal and the prospective outside evaluator. In addition, should a solicited or unsolicited proposal under consideration contain a restrictive use legend or statement other than that

prescribed in § 18-1.304-2(c), the legend or statement should be reviewed to assure that it does not preclude NASA from disclosing the proposal outside of the Government (or JPL) for purposes of obtaining a NASA evaluation. In the event NASA is so precluded and an outside evaluation is nevertheless desired, the submitter should be advised that NASA may be unable to consider the proposal unless the submitter consents in writing to having the proposal evaluated outside the Government.

(3) *Agreement with evaluator.* Where it is determined to disclose a proposal outside the Government pursuant to subparagraph (2) of this paragraph, the following agreement, or a similar appropriate arrangement for the treatment of the proposal, shall be obtained from the recipient prior to such disclosure. Also, review should be made to assure that the NASA notice required by paragraph (e) of this section is affixed to the proposal before it is disclosed to the evaluator.

**CONDITIONS FOR EVALUATING PROPOSALS  
(OCTOBER 1969)**

Whenever NASA furnishes a proposal for evaluation, the recipient agrees to use the technical data and business information contained in the proposal only for NASA evaluation purposes.

This requirement does not apply to technical data or business information obtained from another source without restriction.

Any notice or legend placed on the proposal by either NASA or the originator of the proposal shall be applied to any reproduction or abstract thereof. Upon completion of the evaluation, the recipient shall return all copies of the proposal and abstracts, if any, to the NASA office which initially furnished the proposal for evaluation.

Unless authorized by the NASA initiating office, the recipient shall not contact the originator of the proposal concerning any aspect of its contents.

(g) *Evaluation and testing of equipment and material.* Should evaluation of a proposal include the evaluation and testing of equipment or material, neither the Government nor any person acting on behalf of the Government assumes any liability to the submitter of the proposal, or any person acting on his behalf, in connection with any damage, loss, injury, or destruction resulting from such evaluation and testing. Nothing contained herein shall preclude the Government from asserting any action against the submitter or any person acting on his behalf arising out of the above circumstances.

§ 18-1.304-3 Technical and other data involved in formal advertising.

See § 18-2.404-4.

§ 18-1.304-4 Privileged business information included in proposals.

In no event will any cost breakdown, profit, overhead rates, financial or management information be disclosed outside the Government, except to evaluate the proposal in which such information is submitted. Regarding disclosure to other offerors, see § 18-3.106-3(b)(1).

§ 18-1.305 Time of delivery or performance.

§ 18-1.305-1 Scope.

This section prescribes policy and procedure regarding requirements as to time of delivery or performance of contracts for supplies or services, excluding construction.

§ 18-1.305-2 General.

(a) The time of delivery or of performance is an essential element of a contract and must be clearly set forth in invitations for bids and requests for proposals. Time schedules for delivery or performance shall be designed to meet the requirements of the particular procurement, all relevant factors considered, and must be realistic. Schedules which are unreasonably tight or difficult of attainment tend to restrict competition, are inconsistent with small business policies, and may result in higher contract prices. Therefore, before issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery or performance schedule which appears unrealistic, and, if necessary, initiate action to make appropriate adjustments, with due attention to relevant factors including the following:

- (1) Urgency of need for the supplies or services;
- (2) Production time in view of quantity, complexity of design, etc.;
- (3) Market conditions;
- (4) Transportation time;
- (5) Industry practices;
- (6) Capabilities of small business concerns;
- (7) Time for obtaining and evaluating bids or offers, and for awarding contracts;
- (8) Time for contractors to comply with any conditions precedent to performance; and
- (9) Time for the Government to perform its obligations under the contract (e.g., furnishing of Government property to the contractor, approval of pre-production samples, and inspection).

(b) Where timely delivery or performance is unusually important to the Government, a liquidated damages provision may be used as provided for in § 18-1.310.

(c) Except where clearly unnecessary, invitations for bids and requests for proposals shall inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

§ 18-1.305-3 Terms.

(a) Delivery schedules may be expressed in terms of:

- (1) Specific calendar dates (e.g., on or before July 1, 1970);
- (2) Specified periods from date of contract (i.e., date of award or acceptance by the Government, or date shown on contract document as effective date of contract); or
- (3) Specified periods from date of receipt by contractor of notice of award or acceptance by the Government (includ-

ing notice by receipt of contract document executed by the Government).

The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. Accordingly, one of the provisions in paragraph (b) or (c) of this section shall be used in advertised procurements and may be suitably modified and used in appropriate negotiated procurements (other than small purchases).

(b) Where the delivery schedule is in terms of specific calendar dates, invitations for bids shall include one of the following provisions:

(1) The foregoing delivery requirements are based on the assumption that the Government will make award by (contracting officer, insert calendar date). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails. (July 1968)

(11) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (contracting officer, insert calendar date). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the contractor receives notice of award: *Provided*, That the contractor promptly acknowledges such receipt. (February 1962)

(c) Where the delivery schedule is based on the date of contract (see paragraph (a) (2) of this section), the invitations for bids will include the following provision:

Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected. (July 1968)

(d) Where the delivery schedule is based on the date of the contract (see paragraphs (a) (2) and (c) of this section), the contract, notice of award, acceptance of proposal, or other contract document executed by the Government

shall be mailed or otherwise furnished the contractor on the day it is dated.

(e) Where the delivery schedule is based on date of receipt by the contractor of notice of award (see paragraph (a) (3) of this section), or where it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see paragraph (b) (2) of this section), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or shall be accompanied by a date of receipt acknowledgment card.

(f) When the required delivery schedule in the invitations for bids is based on date of the contract (see paragraph (a) (2) of this section), a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (see paragraph (a) (3) of this section):

(1) Shall be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails; and

(2) If the delivery date offered by the bid (computed in accordance with subparagraph (1) of this paragraph) is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but

(3) If award is made under subparagraph (1) of this paragraph, under the terms of the contract the delivery date will be the number of days, after actual receipt by the contractor of the notice of award, which were specified in the bid.

§ 18-1.305-4 Time of delivery clauses.

(a) Examples of time of delivery clauses for invitations for bids are set forth in paragraphs (b) and (c) of this section. They may be modified or other clauses may be used to state particular delivery requirements or any special procedures to be used in the evaluation, rejection, or award process as regards time of delivery. These clauses also may be suitably modified and used as appropriate in negotiated procurements.

(b) The following clause may be used where delivery by a particular time is essential to meet the Government's requirements:

TIME OF DELIVERY (FEBRUARY 1962)

Delivery is required to be made in accordance with the following schedule:

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))
-----	-----	-----
-----	-----	-----
-----	-----	-----

Bids offering delivery of each quantity within the applicable delivery period specified above will be evaluated equally as regards time of delivery. Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected. Where a bidder offers an earlier delivery schedule than that called for above, the Government reserves the right to award

either in accordance with the required schedule or in accordance with the schedule offered by the bidder. If the bidder offers no other delivery schedule, the delivery schedule stated above shall apply.

BIDDER'S PROPOSED DELIVERY SCHEDULE  
(To be completed by Bidder)

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))
-----	-----	-----
-----	-----	-----
-----	-----	-----

(c) The following clause may be used where delivery by a certain time is desired although not essential, but delivery by a specified later time is necessary to meet the Government's requirements:

TIME OF DELIVERY (FEBRUARY 1962)

Delivery is desired by the Government in accordance with the following schedule:

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))
-----	-----	-----
-----	-----	-----
-----	-----	-----

If the bidder is unable to meet the above delivery schedule, he may, without prejudice to the evaluation of his bid, set forth his Proposed Delivery Schedule below; but such delivery schedule must not extend the delivery period beyond the time of delivery called for in the following required delivery schedule:

REQUIRED DELIVERY SCHEDULE

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))
-----	-----	-----
-----	-----	-----
-----	-----	-----

Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above will be considered nonresponsive and will be rejected.

If the bidder does not propose a different delivery schedule, the Government's desired delivery schedule shall apply:

BIDDER'S PROPOSED DELIVERY SCHEDULE  
(To be completed by Bidder)

Item No.	Quantity	Time (conditions to be specified by Contracting Officer (see (d) below))
-----	-----	-----
-----	-----	-----
-----	-----	-----

(d) In the blank spaces entitled "Time" under the clauses set forth in paragraphs (b) and (c) of this section, the contracting officer shall insert one of the following phrases, as appropriate:

- (1) "[On] (on or before) the date(s) specified below."
- (2) "Within the number of days stated below after date of contract."
- (3) "Within the number of days stated below after the date of receipt of a written notice of award."
- (4) "Within the periods specified below." (When this phrase is inserted, the wording "during the month(s) of -----" or "not sooner than ----- and not later

than -----" should be used to specify the periods.)

§ 18-1.305-5 Research, exploratory development, and advanced development.

Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitations shall indicate such urgency. Generally, solicitations to conduct research and exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

§ 18-1.306 Approval signature.

Approval signatures on contracts or purchase authorizations shall be minimized to the greatest practical extent and, in the event that multiple approval signatures are required, they shall, where possible, be obtained concurrently.

§ 18-1.307 Priorities, allocations, and allotments.

§ 18-1.307-1 NASA program.

(a) *General.* In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, it is national policy to require contractors to use ratings and allotment authority to support military procurement, to the extent required by the Business and Defense Services Administration (BDSA). In addition to direct procurement and construction of the Department of Defense, the Office of Emergency Preparedness has authorized BDSA to provide priorities authority for all procurement and construction programs of NASA. The Department of Defense is the claimant agency to the Office of Emergency Preparedness for NASA.

(b) *Implementation.* Department of Defense implementation of all rules and regulations published by BDSA, with respect to which the Department of Defense is delegated administrative responsibility, is contained in the DOD Priorities and Allocations Manual. NASA implementation is published in Part 18-52 of this chapter.

(c) *Operating responsibility.* NASA installations shall comply with the priorities and allocations program, including the Defense Materials System; as set forth in:

- (1) the DOD Priorities and Allocations Manual;
- (2) the rules and regulations published by BDSA; and
- (3) instructions set forth in Part 18-52 of this chapter.

§ 18-1.307-2 Required use of priorities, allocations, and allotments clause.

The clause set forth below shall be inserted in or attached to all ratable contracts, except that no such clause need be attached to those purchase orders of

less than \$500 which are not rated. Rateable contracts are those contracts for supplies which are required to be supported with rating and allotment authority (see the DOD Priorities and Allocations Manual).

**PRIORITIES, ALLOCATIONS, AND ALLOTMENTS**  
(SEPTEMBER 1962)

The contractor shall follow the provisions of DMS Reg. 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

**§ 18-1.307-3 Inadequate response to solicitations.**

(a) In accordance with the policies and procedures of the Priorities and Allocations System rated contracts and purchase orders or Authorized Controlled Material Orders may be placed on selected suppliers when adequate response to a solicitation is not received. Therefore, when there are no bids or proposals received as a result of a solicitation or if the bids or proposals received do not cover the entire requirement, normal procurement procedures shall be followed in attempting to locate sources, to the extent exigencies of the procurement will permit. If such efforts are unsuccessful, and it is determined at this point in time that the procurement must be accomplished, then rated orders in the form of rated contracts, rated purchase orders or an Authorized Controlled Material Order shall be presented, to one or more (as appropriate) selected suppliers or manufacturers qualified to produce the item or material. This will be accomplished by a cover letter signed by the contracting officer, citing the requirements of the Defense Production Act and BDSA Regulation 2, and requesting timely acceptance thereof by the contractor. The letter shall also request that any reasons for rejection be promptly furnished in writing, as required by the BDSA Regulations. Rated orders will be placed pursuant to appropriate negotiation authority. Contracts and purchase orders shall contain, as a minimum, the following information in addition to normal contractual requirements to be a valid rated order:

- (1) DO or DX rating on contracts or purchase orders as appropriate;
- (2) DMS allotment number on Authorized Controlled Material Orders;
- (3) Certification "Certified for National Defense Use Under DMS Reg 1 or BDSA Reg 2 (as appropriate)";
- (4) Delivery schedule; and
- (5) Signature.

(b) Rated orders or Authorized Controlled Material Orders which are rejected by suppliers shall be forwarded to BDSA, through appropriate priorities assistance channels, for such action as BDSA considers appropriate.

**§ 18-1.308 Records of contract actions.**

(a) Each contract file shall contain documentation of actions taken with respect to the contract, including final disposition, sufficient to constitute a full

history of the transaction which will permit ready reconstruction of all of the stages of the transaction to:

- (1) Support actions taken by various personnel in the procurement cycle;
- (2) Provide information for reviews conducted by the field installation concerned, the General Accounting Office, or others;
- (3) Supply data for use in preparing replies to Congressional inquiries; and
- (4) Furnish essential facts in the event of litigation.

To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or summary statements of undocumented actions should be prepared promptly and be retained in the contract file in chronological order.

(b) Each contract file shall include the following data, in the appropriate order and to the extent applicable:

- (1) A copy of the procurement request;
- (2) A copy of the Determination and Findings statement and justifications for authority to negotiate (see Subpart 18-3, of this chapter);
- (3) A copy of the procurement plan (see § 18-3.852);
- (4) The list of sources solicited or justification for limiting such sources;
- (5) Any small business or labor surplus set-aside determinations;
- (6) A copy of the invitation for bids or the request for proposals, including the drawings and specifications or an identifiable reference thereto;
- (7) The Security Requirements Check List (DD Form 254);
- (8) All bids or proposals received with an abstract thereof;
- (9) The bidders' Statements of Contingent Fees;
- (10) All preaward surveys;
- (11) Selection of the successful contractor, including—
  - (i) The reasons for selection;
  - (ii) Statement of the Source Evaluation Board;
  - (iii) The contracting officer's determination of the contractor's responsibility; and
  - (iv) Any Small Business Administration Certificate of Competency (see § 18-1.705-4);
- (12) All price and cost data submitted or used;
- (13) A full record of negotiations, including but not limited to—
  - (i) Participants;
  - (ii) Dates of meetings or telephone calls;
  - (iii) Government-furnished materials or facilities provided;
  - (iv) Subcontracting;
  - (v) Terms and conditions agreed to;
  - (vi) Deviations, if any, from prescribed contract clauses;
  - (vii) Technical recommendations; and
  - (viii) Justification for final price;
- (14) Justification for type of contract used (see § 18-3.305-5);
- (15) Any exceptions or exemptions from the Buy American Act or Appro-

priation Act restrictions (see Part 6 of this regulation);

- (16) A copy of the contract or award;
  - (17) Required approvals of contract;
  - (18) All pertinent correspondence;
  - (19) Copies of all change orders, and supplements, with supporting documents;
  - (20) Comprehensive termination data;
  - (21) Copies of royalty reports received;
  - (22) Final release upon completion of the contract;
  - (23) Evidence of legal review where required, and copy of comments, if any, made by legal counsel; and
  - (24) Any additional documents considered necessary to present a complete résumé of the contract action.
- (c) This § 18-1.308 does not apply in the case of small purchases (see § 18-3.602(f)).

**§ 18-1.309 Solicitations for information or planning purposes.**

It is the general policy of the NASA to solicit bids, proposals or quotations only where there is a definite intention to award a contract or purchase order. However, in some cases solicitation for informational or planning purposes may be justified. Invitations for bids and requests for proposals will not be used for this purpose. Requests for quotations may be issued for informational or planning purposes only with prior approval of the Procurement Officer. In such cases, the request for quotation shall clearly state its purpose and, in addition, the following statement in capital letters shall be placed on the face of the request: "The Government Does Not Intend To Award a Contract on the Basis of This Request for Quotation, or Otherwise Pay for the Information Solicited." The foregoing does not prohibit the allowance, in accordance with § 18-15.205-3, of the cost of preparing such quotations.

**§ 18-1.310 Liquidated damages.**

(a) This § 18-1.310 applies to procurement by formal advertising and procurement by negotiation. Liquidated damages provisions normally will not be utilized but may be used where both (1) the time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damages if the delivery or performance is delinquent, and (2) the extent or amount of such damages would be difficult or impossible to ascertain or prove. Where a liquidated damages provision is to be used in a supply or service contract, insert the clause as prescribed by § 18-7.105-5.

(b) The rate of assessment of liquidated damages must be reasonable, considered in the light of procurement requirements on a case-by-case basis, since liquidated damages fixed without reference to probable actual damages may be held to be a penalty and therefore unenforceable.

(c) The law imposes the duty upon a party injured by another to mitigate the

damages which result from such wrongful action. Therefore, where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to terminate the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. For these reasons, particularly close administration over contracts containing liquidated damages provisions is imperative.

(d) When any contract includes a provision for liquidated damages for delay, the Comptroller General, on the recommendation of the Administrator, is authorized and empowered to remit the whole or any part of such damages as he may consider to be just and equitable. Recommendations concerning remissions of liquidated damages will be forwarded by the contracting officer, with appropriate documentation, via the Director of the field installation to the Director of Procurement for submission to the Administrator.

§ 18-1.311 Buying in.

"Buying In" refers to the practice in procurements involving price competition, of attempting to obtain a contract award by knowingly offering a price less than anticipated costs with the expectation of either (a) increasing the contract price during the period of performance through change orders or other means, or (b) receiving future "follow-on" contracts at prices high enough to recover any losses on the original "buy-in" contract. Such a practice is not favored since its long term effects may diminish competition and it may result in poor contract performance. Where there is reason to believe that "buying in" has occurred, contracting officers shall assure that amounts thereby excluded in the development of the original contract price are not recovered in the pricing of change orders or in follow-on procurements subject to cost analysis.

§ 18-1.312 Voluntary refunds.

(a) *General.* A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

(b) *Solicited refunds.* Voluntary refunds may be requested during or after

contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharge or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Deputy Administrator or his designee after coordination with the Director of Procurement.

(c) *Disposition of voluntary refunds.*

(1) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(2) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the National Aeronautics and Space Administration and shall be forwarded immediately to the Financial Management Office of the appropriate installation. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

§ 18-1.314 Disputes and appeals.

(a) When a dispute cannot be settled by agreement and a decision under the "Disputes" clause is necessary, the contracting officer shall review the available facts pertinent to the dispute before making his final decision. When there is any doubt as to whether the issue in dispute is subject to the disputes procedure, a decision will be made pursuant to the "Disputes" clause. The disputes procedure shall not be invoked in cases when a dispute is clearly not subject to the procedure. The contracting officer shall obtain, from assigned legal and other advisors, such advice and assistance as is required to render a decision. The decision must be that of the contracting officer (or his representative if such representative has been authorized by the contracting officer to make final decisions pursuant to the "Disputes" clause); however, prior to making the decision, the contracting officer (or representative authorized to render final decisions) may consult with any other Government personnel involved in the dispute.

(b) The final decision should include a statement of facts sufficient to enable the contractor to understand both the decision and the basis therefor. Normally, the decision should (1) recite the

contractor's claim or otherwise describe the nature of the dispute, with necessary references to pertinent contract provisions; (2) state the facts relevant to the dispute on which the parties are in agreement and, as clearly as possible, the facts on which they are in disagreement; and (3) set forth the contracting officer's decision and the basis therefor.

(c) When a final decision of the contracting officer involves a dispute that is subject to the procedure of a "Disputes" clause, or when there is doubt as to whether the decision is subject to such procedure, a paragraph substantially as follows shall be included in such decision:

This is the final decision of the Contracting Officer on the question involved in this dispute. Decisions on disputed questions of fact and on other questions that are subject to the procedure of the Disputes clause may be appealed in accordance with the provisions of the Disputes clause. If you decide to make such an appeal from this decision, written notice thereof (in triplicate) must be mailed or otherwise furnished to the Contracting Officer within 30 days from the date you receive this decision. Such notice should indicate that an appeal is intended and should reference this decision and identify the contract by number. The NASA Board of Contract Appeals is the authorized representative of the Administrator for hearing and determining such disputes. The Rules of the NASA Board of Contract Appeals are set forth in Appendix A to the NASA Procurement Regulation (34 F.R. 3613-3616, Feb. 23, 1969).

(d) After an appeal has been filed, a controversy may be disposed of by agreement. However, processing of the appeal shall not be suspended by such efforts except upon order, or as otherwise authorized, by the NASA Board of Contract Appeals.

(e) In the event of an appeal, any amount determined to be payable in the decision of the contracting officer, less any portion previously paid, normally should be paid promptly following the contracting officer's decision, without prejudice to the rights of either party in the event of a subsequent appeal.

§ 18-1.315 Procurement of jewel bearings.

(a) It has been determined that the Government's interests require the continued maintenance of an active and versatile mobilization base for the production of jewel bearings. This base has been established at the Government-owned William Langer Jewel Bearing Plant, Rolla, N. Dak. In support of this policy, Government purchases of jewel bearings shall be made from that plant in all cases where it can meet purchase requirements. Additionally, all procurements of items containing jewel bearings shall provide, in the solicitations and resulting contracts, a requirement that jewel bearings in the quantities, and of the types and sizes necessary for the end items to be supplied under the contract, be purchased from the William Langer Jewel Bearing Plant and be incorporated in the delivered items, subject to the criteria provided in paragraphs (b), (c), and (d) of this section, except:

(1) When quantity requirements, quality standards, or delivery requirements cannot be satisfied by bearings manufactured at the William Langer Jewel Bearing Plant;

(2) For purchases of commercial end items having jeweled components used in commercial end items, when the quantities of such end items or components are such that the contracting officer either knows or reasonably expects that all such commercial end items are already manufactured and available from the stock of any dealer, wholesaler, distributor, or manufacturer; or

(3) For bearings used in items that are to be procured and used outside the United States, its possessions, and Puerto Rico.

(b) In order to assure that all bidders or offerors are competing on the same basis, it is necessary that the solicitation for items containing jewel bearings clearly state:

(1) The successful contractor will be required to purchase (directly or through subcontractors, as appropriate) William Langer Jewel Bearing Plant bearings at prices established in the U.S. Government Jewel Bearing Price List then in effect, and to incorporate such bearings in the items to be delivered; and

(2) Bids or proposals are to be predicated on this requirement.

If it should occur, after award, that the William Langer Jewel Bearing Plant rejects the contractor's (or subcontractor's) purchase order entirely or in part, the contractor (or subcontractor) shall be required to so notify the contracting officer who will effect an equitable adjustment in the contract price to reflect any costs or savings accruing to contractor by reason of any price differential for such bearings, pursuant to the clause of this contract entitled "Changes."

(c) To the extent William Langer Jewel Bearing Plant bearings are fungible with other bearings and it is not practical or would be costly to segregate jewel bearing inventories or work in process for items to be furnished the Government from that to be furnished commercial customers, or for other similar reasons, it may be in the Government's interest to waive the use requirements at the discretion of the contracting officer. No waiver will be granted to prospective contractors prior to award and no assurance will be given prior to award to any prospective contractors that such waiver will be granted after award. Minor inconvenience to contractors alone will not satisfy the need for demonstrating that the Government's interests are served by such waiver. When the use requirement is waived, an equitable adjustment for cost savings resulting therefrom shall be made.

(d) In circumstances where a procurement is not exempt from this procedure but it would be impractical or contrary to the Government's best interest to require actual use of all of the William Langer Jewel Bearing Plant bearings required to be purchased, the contracting officer may provide in the solicitation and resulting contract that a minimum fixed

percentage of the total bearings requirements be of William Langer Jewel Bearing Plant origin, or that William Langer Jewel Bearing Plant bearings be purchased for and used in a certain number of the total items to be supplied.

(e) In all procurements subject to these procedures, the following clause is required for use:

REQUIRED SOURCES FOR JEWEL BEARINGS  
(JULY 1968)

Jewel bearings required in the performance of this contract shall be procured from the William Langer Jewel Bearing Plant, Rolla, N. Dak., at prices established in the Official U.S. Government Jewel Bearing Price List dated (insert latest effective date). The Contractor agrees that the delivery dates specified for the quantities and types of jewel bearings so ordered will be reasonably related to manufacturing schedules and delivery requirements of this contract. The Contractor agrees to notify the Contracting Officer promptly of the rejection of his (or any subcontractor) purchase order in whole or in part by the William Langer Jewel Bearing Plant and further agrees to an equitable adjustment in the contract price pursuant to the "Changes" clause of this contract to reflect any costs or savings to the Contractor (or subcontractor) resulting from such rejection. The Contractor further agrees to incorporate or to have his subcontractors incorporate the purchased William Langer Jewel Bearing Plant jewel bearings in the items to be delivered under this contract.<sup>1</sup> The requirement for use (but not the requirement for purchase) of such bearings may be waived in the discretion of the Contracting Officer when such waiver is determined by him to be in the Government's interest, and where agreement is reached for an equitable adjustment in the contract price by reason of such waiver.

§ 18-1.316 Disclosure of contractor performance data to other government agencies and foreign governments.

(a) Subject to any applicable security requirements, NASA installations shall honor the requests of other Government agencies for readily available information relating to the performance of prime contractors. The agency requesting the information shall be advised that it will be responsible for any further release of such information.

(b) Requests from foreign governments should similarly be honored. When such information is furnished to a foreign government, a copy of the request from the foreign government and the information furnished will be forwarded to the Assistant Administrator for International Affairs, NASA Headquarters.

(c) If there is any question as to the propriety of divulging the information

<sup>1</sup> Where less than total purchase and usage of William Langer Jewel Bearing Plant bearings is to be required, substitute "The Contractor further agrees to purchase and incorporate William Langer Jewel Bearing Plant bearings in items to be delivered under this contract equivalent to at least \_\_\_\_\_ percent of the total quantity of bearings required to perform this contract." (Percentage to be inserted by Contracting Officer.) In lieu of a percentage, the clause may refer to specific quantities of items listed in the schedule for which William Langer Jewel Bearing Plant bearings must be purchased and used.

to other Government agencies or to any foreign government for any reason, including the security aspect, the request shall be forwarded to the Director of Procurement for consideration, with an explanation of the reasons why the release of such information is questioned. The Director of Procurement will, prior to approving the release of information, obtain the concurrence of:

(1) The General Counsel;

(2) The Assistant Administrator for International Affairs, if the request for information is from a foreign government; and

(3) The Director, Security Division, NASA Headquarters, if the information appears to involve a problem of security.

§ 18-1.317 Lease versus purchase criterion.

(a) There are many situations in which the Government's equipment requirements may be more economically filled by lease than by purchase. This is particularly true in the case of certain expensive commercial equipments. The decision to lease rather than purchase must be made on a case-by-case basis. Leasing should be used where it is in the Government's interest. The criteria to be considered in each case include the following:

(1) The Government requirement is of short duration, and purchase would be costlier than leasing (generally, long-term leasing should be avoided in the absence of compelling circumstances);

(2) The probability that the equipment will become obsolete and that replacement within a short period will be necessary; and

(3) The equipment is special or technical, and the lessor will provide the equipment, as well as maintenance and repair services, at a lower cost than would otherwise be available to the Government.

(b) Lease versus purchase decisions should be based on an economic analysis and the contract file documented to support the final decision (see §§ 18-3.501(b)(49) and 18-3.804-2(c)(2)).

§ 18-1.318 Contracts using annual funds.

(a) *Authorization to span fiscal years.* When an appropriation act so provides, contracts for maintenance and operation of facilities, and contracts for support services may be entered into for periods not in excess of 12 months beginning at any time during the fiscal year covered by such act. This authority should be used to reduce the number of contracts that would otherwise have to be placed at the beginning of the new fiscal year. However, it shall not be used to place contracts that exceed a 12-month period.

(b) *Contracts conditioned upon the availability of funds.* When it is necessary to initiate a procurement properly chargeable to funds of a new fiscal year prior to the availability of such funds, the following clause shall be included in the invitation for bids or other solicitation and the resultant contract:

AVAILABILITY OF FUNDS (FEBRUARY 1967)

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money shall arise unless and until funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

(c) The authority set forth in paragraph (b) of this section shall be used only for administrative operations and continuing services (such as rentals, utilities, and items of supply) which are necessary for normal operation and for which the Congress consistently appropriates funds. When this authority is used, the supplies or services shall not be accepted by the Government until funds are available to the contracting officer for the procurement and until the contracting officer has given notice to the contractor (to be confirmed in writing) of such availability. Appropriate records will be maintained to insure adequate administrative control of funds.

§ 18-1.319 Renegotiation performance reports.

The provisions of this section are applicable to all contracts except, (a) purchase orders made pursuant to the provisions of Subpart 18-3.6; (b) delivery orders placed under Federal Supply Schedule contracts; and (c) those contracts known to be exempt from renegotiation.

§ 18-1.319-1 Renegotiation board.

Pursuant to the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1211-1233), the Renegotiation Board reviews profits of NASA contractors performing negotiable contracts and subcontracts aggregating more than \$1 million in a fiscal year in order to eliminate any excessive profits therefrom. Such review involves consideration of financial statements and other information furnished by both contractors and NASA.

§ 18-1.319-2 Renegotiation information for contract file.

The contracting officer shall include in the file of each contract information pertaining to the extent and effectiveness of competition obtained in the negotiation and award of the contract, the reasonableness of the prices, fees, and profits negotiated, any incentive and target formulae incorporated in the contract, the extent of risk assumed by the contractor, the contractor's efficiency in performance of the contract, and any other information which would facilitate compilation of the renegotiation performance reports described in § 18-1.319-3 below. This is particularly important in the case of incentive-type contracts where the question may be raised as to whether additional profits paid to the contractor by operation of the incentive provisions have been earned. Incentive-type contract information should be complete but succinct. To insure the collection of accurate and detailed information, the

forementioned data shall be included in the contract file as soon as it becomes available.

§ 18-1.319-3 Performance reports.

(a) Performance reports should provide complete, accurate, and objective data to the Renegotiation Board. When the Board requests contractor performance reports, the procuring installation concerned shall furnish information substantially in accordance with the checklist set forth below, including any favorable recommendations giving due credit for better than average contract performance and any unfavorable recommendations because of unsatisfactory performance. Extensive performance data shall be accumulated on incentive-type contracts in sufficient detail so that the report will clearly show, as to the basis for payment of any increments of profit or fee provided as a part of the incentive arrangement in the contract, whether such increments were earned as the result of the contractor's performance or as the result of unreliable cost estimates or unrealistic performance targets when the incentive arrangements were negotiated.

- (1) Date of report;
- (2) Installation making report;
- (3) Source and date of request for report;

(4) Name and address of contractor (if subsidiary or division, show name of parent company);

- (5) Period covered by report;
- (6) List of contracts being performed during the period concerned, showing as to each:

- (i) Contract number;
- (ii) Date;
- (iii) Total amount of contract;
- (iv) Brief description of the scope of work, service, product, etc.;
- (v) Method of procurement (advertised or negotiated, and extent of competition);
- (vi) Type of contract;
- (vii) Total billings during period; and
- (viii) Principal place of performance.

(7) Brief description of manufacturing techniques and type of work normally performed by contractor (e.g., production, fabrication, assembly) and relative complexity of the work. State the percentage of work subcontracted;

(8) Information concerning contractor performance, including extent to which:

(i) The product or service exceeded, met, or fell below the contract requirements;

(ii) Delivery schedules were met (indicate reasons for failures to meet schedules, and compliance with requests for early deliveries, if any);

(iii) Rejections and spoilage rates were high or low and reasons therefor;

(iv) Contractor met targets under incentive contracts and reasons therefor;

(v) Contractor was economical in use of materials, facilities, and manpower, and was otherwise effective in controlling production costs;

(vi) Contractor made effective use of his facilities (state whether he expanded

facilities to undertake renegotiable business, and if so, was such expansion excessive); and

(vii) Strikes, stoppages, or other significant developments in labor management affected contract performance.

(9) Information concerning reasonableness of costs and profits, including:

(i) The basis for use of a particular type of contract in significant contracts (if an incentive contract, describe also the basis for negotiation of target and cost sharing formulae);

(ii) Adequacy and reliability of cost information furnished by the contractor;

(iii) Unusual risks assumed by contractor in particular contracts, e.g., close pricing, labor and material cost increases, engineering changes, shortage of materials, inventory spoilage and obsolescence, cutbacks, terminations, and quality or performance guarantees (explain extent to which risks were reduced or minimized by types of contracts used);

(iv) Contingencies included in quoted prices;

(v) Experience as to profits received by contractor in significant contracts, especially incentive contracts, with appraisal as to whether or not profits were earned by contractor's efforts (state whether any important contracts were negotiated with no profit or at less than normal profit);

(vi) Significant refunds and voluntary price reductions, with circumstances of each;

(vii) Evaluation of contractor as a high, average, or low cost producer;

(viii) Partial financing by prompt payments under cost-plus-fixed-fee contracts;

(ix) Reasonableness of contractor's pricing policies;

(x) Return on invested capital (where applicable);

(xi) Comparison of prices with competitors' prices for same or similar products or services;

(xii) Reason for cost overruns and underruns in cost-reimbursement type contracts;

(xiii) Assistance given contractor by NASA technical and engineer personnel which reduces the contractor's risk;

(xiv) Information concerning the nature and effectiveness of the contractor's cost reduction program and what consideration was given to the contractor's cost reduction program in determining profit and fee on negotiated contracts.

(10) List of capital funds and facilities employed by contractor, with particular reference to their source, e.g., contractor's equity capital, borrowed or rented, Government-financed, or Government-furnished;

(11) Extent to which the contractor has complied with Government policies, such as the small business program, labor surplus area program, competition in subcontracting, "make-or-buy" program, and nondiscrimination;

(12) Full information as to any terminations for default or for the convenience of the Government, to include the status of appeals or claims, if any,

and the extent to which payments were made during the period concerned;

(13) Status of price revision actions and the basis for any revision completed in the period concerned;

(14) Such pertinent information on subcontracts, as is available;

(15) Appraisal of contractor's contribution to the aerospace effort, with particular emphasis on work done by him in development of new material, invention of new devices, management of large systems contracts as prime or associate contractor;

(16) A current appraisal of contractor's performance and recommendation as to reasonableness of contractor's profits and fees for the period under consideration under the listed contracts; and

(17) Such other information as may be particularly requested by the Renegotiation Board.

**§ 18-1.319-4 Procedures for handling requests for performance reports.**

(a) The Renegotiation Board has been requested to submit its requests for performance reports to the Director of Procurement, NASA Headquarters (Code KDP-3).

(b) Requests for performance reports received by the Director of Procurement will be forwarded to the installation concerned. Where only one installation is involved, that installation will be instructed to submit its report directly to the cognizant regional office of the Renegotiation Board. A copy of such performance report will be forwarded to the Director of Procurement (Code KDP-3).

(c) Where more than one installation is involved, such installations will be instructed to submit their reports to the Director of Procurement (Code KDP-3). The Director of Procurement (Code KDP-3) will review such reports prior to forwarding them to the Renegotiation Board to insure that the reports are consistent with each other or that discrepancies are appropriately explained.

**§ 18-1.320 Security requirements.**

When NASA contractors or their employees require access to classified information, or originate classified information, at any stage in the performance of NASA contracts, the NASA installation shall follow the security procedures set forth in NASA Management Instruction 1650.1, "Industrial Security Policies and Procedures."

**§ 18-1.324 Warranties.**

**§ 18-1.324-1 General.**

A warranty clause gives the Government a contractual right to assert claims regarding the deficiency of supplies or services furnished, notwithstanding any other contractual provisions pertaining to acceptance by the Government. Such a clause allows the Government additional time after acceptance in which to assert a right to correction of the deficiencies or defects, reperformance, an equitable adjustment in the contract price, or other remedies. This additional period of time may begin at the time of

delivery or at the occurrence of a specified event, and may run for a given number of days or months or until occurrence of another specified event. The value of a warranty clause depends upon the circumstances, and its use, terms, and conditions are influenced by many factors (see § 18-1.324-3(b)). A warranty clause may therefore be tailored to fit the individual procurement or class of procurements.

**§ 18-1.324-2 Policy.**

(a) A warranty clause shall be used when it is found to be in the best interests of the Government, after an analysis of the factors listed in § 18-1.324-3(b).

(b) A warranty clause shall not be included in cost-reimbursement type contracts, since the warranty aspects of the clause "Inspection of Supplies and Correction of Defects" in § 18-7.203-5 and the "Inspection and Correction of Defects" in § 18-7.402-5 are sufficient to protect the interests of the Government.

(c) Any warranty clause included in a contract shall not limit any rights afforded to the Government by the provisions of the Inspection clause relating to latent defects, fraud, and gross mistakes that amount to fraud. Care should be taken to insure that the warranty clause used and any other warranty provisions in the contract (e.g., in the specifications) are consistent, especially where performance specifications are used.

**§ 18-1.324-3 Use of a warranty.**

(a) Except for the commercial warranty clauses covered in § 18-1.324-4 and warranties contained in Federal, military, or construction specifications, the decision to use a warranty clause, or to include a warranty provision in a specification other than a Federal, military, or construction specification shall be made only upon the written authorization of the Procurement Officer or his designee. This decision may be made either for individual procurements or for classes of procurements.

(b) In deciding whether to use a warranty clause, at least the following factors shall be considered:

(1) Nature of the item and its end use;

(2) Cost of the warranty and degree of price competition as it may affect this cost;

(3) Criticalness of achieving specified performance capabilities and design specifications;

(4) Cost of correction or replacement, either by the contractor or another source, in the absence of a warranty;

(5) Administrative cost and difficulty of enforcing the warranty;

(6) Ability to take advantage of the warranty, as conditioned by storage time, distance of the using agency from the source, or other factors;

(7) Operation of the warranty as a deterrent against furnishing of defective or nonconforming supplies;

(8) The extent to which Government acceptance is to be based upon contractor inspection or quality control;

(9) Whether because of the nature of the items the Government inspection sys-

tem would not be likely to provide adequate protection without a warranty;

(10) Whether the contractor's present quality program is reliable enough to provide adequate protection without a warranty, or, if not, whether a warranty would cause the contractor to institute an effective and reliable quality program;

(11) Reliance on "brand-name" integrity;

(12) Whether a warranty is regularly given for a commercial component of a more complex end item;

(13) Criticalness of item for protection of personnel, e.g., for safety in flight;

(14) The stage of development of the item and the state of the art; and

(15) Customary trade practices.

(c) (1) When a decision has been made to use a warranty clause in a supply contract, consideration shall be given to a contractual requirement that the warranted items be marked as such or that notice of the warranty be otherwise furnished with the items, in order to inform those who store, stock, and use the items that they are warranted and to encourage them to advise the contracting officer of any defects. The marking or notice to be required need not state the complete warranty; a short statement that a warranty exists, its duration, and whom to notify if an item is found to be defective will normally be sufficient.

(2) In deciding whether to impose such a requirement, the contracting officer shall take into account:

(i) The feasibility (for the contractor) of so marking the items or otherwise furnishing notice of the warranty with them; and

(ii) The cost to the Government of such a requirement in relation to its probable benefit in the enforcement of the warranty.

(3) When the contracting officer is notified of a defect in warranted items, he should ascertain whether the warranty is currently in effect and assure that proper and timely notice of the defect is given to the contractor.

(d) Warranties required by applicable architect-engineer specifications shall be included in advertised or negotiated construction contracts.

**§ 18-1.324-4 Commercial warranties.**

In either formally advertised or negotiated procurements involving a commercial supply or service or construction, the contracting officer may include in the solicitation a warranty clause which is standard or customary in the trade, or one which is substantially similar to and not in excess of a standard or customary trade warranty—provided in either case the contracting officer, after reviewing the factors listed in § 18-1.324-3(b), decides that inclusion of such a clause is in the best interests of the Government.

**§ 18-1.324-5 Scope of warranty clause (other than commercial warranty clause).**

(a) The terms and conditions of a warranty clause vary with the circumstances of the procurement. The clause

must state the duration of the warranty. The clause may either provide that the contractor will be liable for defects or nonconformance to contract requirements existing at the time of delivery, or provide that he will be liable for such defects or nonconformance which develop prior to the expiration of a specified period of time or before the occurrence of a specified event.

(b) A warranty clause shall also include a specified period during which notice must be given to the contractor of any defects or nonconformance to contract requirements. The interest of the Government normally will be protected if the notice period starts at the time of delivery, or where services are involved, upon acceptance thereof by the Government. In some cases, however, it may be necessary to start the notice period at a later time. For example, where conformance of supplies cannot be determined satisfactorily until they are used, the period should begin when the items are put to use, or where supplies are procured in lots under sampling procedures and delivered in increments for storage, the period may begin when the supplies are put to use or at the time of the last delivery.

(c) Where the Government specifies the design of the item and its precise measurements, tolerances, materials, tests, or inspection requirements, the contractor's liability for defects or nonconformance should usually be limited to those in existence at the time of delivery.

(d) Where a contract contains performance specifications and design is of minor importance, the contractor's liability may extend to defects or nonconformance to specifications which may arise after delivery of the supplies or acceptance of the services. Where appropriate, however, the warranty should be limited to defects or nonconformance existing at the time of delivery of the supplies or acceptance of the services.

(e) Ordinarily, the remedy provided under a warranty clause to return nonconforming supplies to the contractor for correction or replacement should satisfy the Government's needs. However, where the supplies are of such nature that correction or replacement does not afford adequate remedy to the Government, the clause should provide (1) that the contracting officer may either return the supplies to the contractor; dispose of them in a reasonable manner, or replace with similar supplies, and (2) that the contractor shall be liable for any cost occasioned to the Government thereby.

(f) When it can be foreseen that it will not be practical to return an article for correction or replacement because of the nature of its use or the cost of preparation for its return (e.g., where operating equipment installed needs only correction of adjustment, but to return it would require substantial expense of removal from where it is installed), the clause should provide that the Government may correct or require the contractor to correct the article in place at its location, at the contractor's expense.

(g) Where it is determined that a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may need special protection (e.g., installation, components, accessories, parts, sub-assemblies and preservation, packaging and packing, etc.)

§ 18-1.324-6 Pricing aspects of fixed-price incentive contract warranty provisions.

In fixed-price incentive contracts, consideration should be given to the pricing aspects of the contract as they relate to a warranty. When it is determined to include a warranty clause, the estimated costs for the warranty shall normally be considered in establishing the incentive target price. Prior to the establishment of the total final price, all costs incurred or to be incurred by the contractor in complying with the warranty clause shall be considered when negotiating the final total negotiated cost. After the establishment of the total final price, contractor compliance with the warranty clause shall be at his expense and at no increase in the total final price.

§ 18-1.324-7 Example of warranty clause for fixed-price supply contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type supply contracts in accordance with §§ 18-1.324-2 and 18-1.324-3.

WARRANTY OF SUPPLIES (APRIL 1968)

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that.....<sup>1</sup>

(1) all supplies furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract; and

(2) the preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(b) The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph (a) of this clause.....<sup>2</sup>

(c) Within a reasonable time after such notice, the Contracting Officer may either:

(1) By written notice require the prompt correction or replacement of any supplies or part thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or

<sup>1</sup> State in the blank the specific warranty period, e.g., "at the time of delivery"; "for (insert period of time) after delivery" or the specified event whose occurrence will terminate the warranty period, e.g., the number of miles or hours of use, or combination of any applicable events or periods of time, as appropriate (see § 18-1.324-5(a)).

<sup>2</sup> Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) after delivery of the nonconforming supplies"; "within (insert period of time) of the last delivery under this contract", as appropriate (see § 18-1.324-5(b)).

(2) Retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances and the Contractor shall promptly make appropriate repayment.

If the contract provides for inspection of supplies by sampling procedures, the Contracting Officer may, at his option, determine the quantity of supplies or parts thereof which are subject to this paragraph in accordance with such sampling procedures.

(d) When return, correction, or replacement is required, the Contracting Officer shall return the supplies and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant, and return.

(e) If the Contractor fails or refuses to correct or replace the nonconforming supplies within a period to ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure or refusal, the Contracting Officer may, by contract or otherwise, correct or replace them with similar supplies and charge to the Contractor the cost occasioned to the Government thereby. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(f) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

(g) Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(h) The word "supplies" as used herein includes related services.

(i) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(b) When the contractor's design is to be used rather than a Government design, insert the word "design," before "material" in paragraph (a) (1) of the clause in paragraph (a) of this section.

(c) The following paragraph (c) may be substituted for the paragraph (c) of the clause in paragraph (a) of this section when the contract provides for inspection of supplies by sampling procedures:

(c) Conformance of supplies or parts thereof subject to warranty action shall be determined in accordance with the applicable sampling procedures contained in the contract except as provided herein. For sampling purposes, the Contracting Officer may group any supplies delivered under this contract. The size of the sample shall be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the

point of reinspection, provided, the supplies remaining are reasonably representative of the quantity on which warranty action is proposed. The original inspection lots need not be reconstituted nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after notice of any breach of warranties in paragraph (a) of this clause as determined herein, the Contracting Officer may exercise one or more of the following options:

- (i) Require an equitable adjustment in the contract price for any group of supplies;
- (ii) Screen the supplies grouped under this clause at Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement;
- (iii) Require the Contractor to screen the supplies at depots designated by the Government within the continental United States and to correct or replace all nonconforming supplies;
- (iv) Return the supplies grouped under this clause to the Contractor for screening and correction or replacement.

(d) The following paragraph (d) may be substituted for paragraph (d) of the clause in paragraph (a) of this section when it is desirable to provide that necessary transportation incident to correction or replacement will be at the Government's expense. This may be appropriate, for instance, when the cost of a warranty would otherwise be prohibitive.

(d) When correction or replacement is required, and transportation of supplies in connection with such correction or replacement is necessary, transportation charges and responsibility for such supplies while in transit shall be borne by the Government.

(e) The following paragraph (e) may be substituted for paragraph (e) of the clause in paragraph (a) of this section when the supplies cannot be obtained from another source.

(e) If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c) to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted. Failure to agree to such an equitable adjustment of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The following paragraph should be added when the clause in paragraph (a) of this section is included in a fixed-price incentive contract.

(j) Prior to the establishment of the total final price, all costs incurred, or to be incurred by the Contractor in complying with this clause shall be considered when negotiating the final total negotiated cost under the Incentive Price Revision clause of this contract. After the establishment of the total final price, Contractor compliance with this clause shall be at the Contractor's expense and at no increase in the total final price.

#### § 18-1.324-3 Example of warranty clause for fixed-price services contracts.

(a) The following clause is an example which is authorized for insertion in fixed-price type services contracts in

accordance with §§ 18-1.324-2 and 18-1.324-3.

#### WARRANTY OF SERVICES (APRIL 1968)

Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will be free from defects in workmanship and will conform to the requirements of this contract at time of acceptance. The Contracting Officer shall give written notice of any such defect or nonconformance to the Contractor.....<sup>1</sup>

Such notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (ii) that the Government does not require correction or replacement. If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby or obtain an equitable adjustment in the contract price. If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price. Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "disputes" clause of this contract.

(b) When the contractor's design is to be used rather than a Government design, insert the words "design and" before "workmanship" in the first sentence of the clause in paragraph (a) of this section.

#### § 18-1.324-9 Another example of warranty clause for fixed-price supply or services or research and development contracts (correction of deficiencies clause).

(a) The following clause is an example which is authorized for insertion (in accordance with §§ 18-1.324-2 and 18-1.324-3) in fixed-price type supply and service and research and development contracts for systems and equipment where performance specifications or design are of major importance.

#### CORRECTION OF DEFICIENCIES (APRIL 1968)

(a) *Definitions.* As used in this clause:

(i) "Deficiency" means any condition or characteristic in any supplies (which term shall include related technical data) or services furnished hereunder, which is not in compliance with the requirements of this contract; and

(ii) "Correction" means any and all actions necessary to eliminate any and all deficiencies.

(b) *General.*

(1) The rights and remedies of the Government provided in this clause:

<sup>1</sup> Insert in the blank the specific period of time in which notice shall be given to the contractor, e.g., "within (insert period of time) from the date of acceptance by the Government"; "within (insert number of hours) of use by the Government"; or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or periods of time, as appropriate.

(1) Shall not be affected in any way by any other provisions under this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(2) This clause shall apply only to those deficiencies discovered by either the Government or the Contractor within.....<sup>1</sup>

(3) The Contractor shall not be responsible under this clause for the correction of deficiencies in Government furnished property, except for deficiencies in installation, unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.

(4) The Contractor shall not be responsible under this clause for the correction of deficiencies caused by the Government.

(c) *Deficiencies in Accepted Supplies or Services.*

(1) *Notice to Contractor; His Recommendation for Correction.* If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Government under this contract, he shall promptly notify the Contractor of the deficiency, in writing, within .....<sup>2</sup> Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall promptly submit to the Contracting Officer his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(2) *Direction to Contractor Concerning Correction of Deficiencies.* Within .....<sup>3</sup> after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at .....<sup>3</sup>

(3) *Correction of Deficiencies by Contractor.* The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the contract price. The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(4) *Modification of Contract With Respect to Uncorrected Deficiencies.* In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall promptly submit a technical and cost proposal to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirements, and an equitable reduction in contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this contract.

(d) *Deficiencies in Supplies or Services Not Yet Accepted.* If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender

<sup>1</sup> Insert a specific period of time, and specify acceptance or another event from which the time is to be computed, or that the time refers to hours of use.

<sup>2</sup> Insert a specific period of time.

<sup>3</sup> Insert the locations where correction may be directed.

to the Government) that a deficiency exists in any supplies or services, he shall promptly correct the deficiency or, if he elects to invoke the procedures in (c) above, he shall promptly communicate information concerning the deficiency to the Contracting Officer in writing, together with his detailed recommendation for corrective action.

(e) *No Extension in Time for Performance, No Increase in Contract Price.*

(1) In no event shall the Government be responsible for extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies, except as may be agreed to by the Government in a supplemental agreement with adequate consideration.

(2) It is hereby specifically recognized and agreed by the parties hereto that this clause shall not be construed as obligating the Government to increase the contract price of this contract.

(f) *Transportation Charges.*

(1) When the Government returns supplies to the Contractor for correction or replacement pursuant to this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the designated destination point under this contract to the Contractor's plant, in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.

(2) When compliance with the terms of this clause by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Government, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the designated destination point under this contract, in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

(g) *Failure To Correct.* If the Contractor fails or refuses to (i) present a detailed recommendation for corrective action in accordance with (c) above, (ii) correct deficiencies in accordance with (c) (3) above, or (iii) prepare and furnish data and reports in accordance with paragraph (e) (3) above, the Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:

(i) Obtain detailed recommendations for corrective action;

(ii) (A) Correct the supplies or services, or

(B) Replace the supplies or services—and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and

(iii) Obtain applicable data and reports; and charge to the Contractor the cost occasioned to the Government thereby.

(h) *Correction of Deficient Replacements and Reperformances.* Any supplies or parts thereof corrected or furnished in replacement and any services reperformed pursuant to this clause shall also be subject to all the

provisions of the clause to the same extent as supplies or services initially accepted.

(b) Depending on the circumstances of the procurement, one or more of the alternate paragraphs in § 18-1.324-7 (c), (d), or (e) above may be substituted for the appropriate paragraphs in the "Correction of Deficiencies" clause in (a) above. Similarly, the alternate paragraph in § 18-1.324-7(f) above may be added to the clause.

**§ 18-1.324-10 Example of warranty clause for fixed-price construction contracts.**

The following clause is an example which is authorized for insertion in fixed-price type construction contracts in accordance with §§ 18-1.324-2 and 18-1.324-3.

**WARRANTY OF CONSTRUCTION (APRIL 1968)**

(a) Except as otherwise expressly provided in this contract, the Contractor shall remedy at his own expense any failure of the work (including equipment) to conform to contract specifications and any defect of material, workmanship, or design in the work—but excluding any defect of any design furnished by the Government under the contract—*Provided*, That the Government gives the Contractor notice of any such failure or defect promptly after discovery but not later than 1 year after final acceptance of the work, except that in the case of defects or failures in a part of the work of which the Government takes possession prior to final acceptance, such notice shall be given not later than 1 year from the date the Government takes such possession. The Contractor, at his own expense, shall also remedy damage to equipment, the site, or the buildings or the contents thereof which is the result of any failure or defect, and restore any work damaged in fulfilling the terms of this clause. Should the Contractor fail to remedy any such failure or defect within a reasonable time after receipt of notice thereof, the Government shall have the right to replace, repair, or otherwise remedy such failure or defect at the Contractor's expense. This warranty shall not delay final acceptance of or final payment for the contract work.

(b) All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein shall be deemed obtained—and shall be enforced—by the Contractor as the agent and for the benefit of the Government without the necessity of separate transfer or assignment thereof: *Provided*, That, if directed by the Contracting Officer, the Contractor shall require such subcontractors, manufacturers, and suppliers to execute such warranties and guarantees in writing to the Government.

(c) Any work repaired or replaced pursuant to this clause shall also be subject to the provisions of this clause to the same extent as work originally performed. The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

**§ 18-1.327 Use of excess aluminum in national stockpile.**

**§ 18-1.327-1 Government use program.**

It has been determined to be in the public interest to establish a Government Use Program requiring, to the maximum practicable extent, purchase of excess aluminum in the Government stockpile by Government contractors, directly or through subcontractors or suppliers,

equal in weight to the weight of aluminum products defined in § 18-1.327-2, purchased by the Government or used in the production of items delivered under Government contracts. In implementation of this program, all contracts in the categories listed below, shall contain the clause in § 18-1.327-2, or, in the case of construction contracts, the clause as modified in § 18-1.327-3:

(a) Purchases in the amount of \$500 or more of aluminum products as defined in § 18-1.327-2.

(b) Purchases of supplies or construction in the amount of \$25,000 or more where the aluminum products used in the production of items delivered under the contract or in the production of items incorporated in construction performed under the contract are estimated by the contracting officer to approximate 10,000 pounds or more.

These provisions do not apply to procurements of supplies or construction effected by purchasing activities located outside, for use outside, the United States, its possessions, and Puerto Rico. These provisions are applicable to new procurements that are effected by amendments to an existing contract. In such cases, only the new procurement portion of the total contract is considered in determining whether the clause is required and, if required, the extent of its applicability. All contracts entered into, including this clause, shall be reported to:

Director, Stockpile Disposal Division, Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

Such reports shall include the name of the contractor, the contract number, the delivery period, and the estimated amount of aluminum which will be required to fulfill the contract.

**§ 18-1.327-2 Contract clause.**

**REQUIRED SOURCE FOR ALUMINUM INGOT (MARCH 1970)**

(a) As used in this clause (i) the term "aluminum products" means aluminum or aluminum alloy in its last commercial form delivered by the producer, mill, or foundry as an end item under this contract, or used to produce an end item under this contract, such as by way of example (but not limited to) wrought aluminum products; forgings and castings; rolled bar, rod, structural shapes, and bare wire; aluminum conductor steel reinforced and bare aluminum cable; insulated or covered wire or cable; extruded bar, rod, shapes and tube (extruded, drawn and welded tube); sheet, strip and plate; pig or ingot; granular or shot; slab; foil; and powder, flake or paste; and (ii) the term "supplier" includes vendors, materialmen, warehousemen, distributors or manufacturers of aluminum products or other items containing aluminum in any form.

(b) Except as provided in (c) below, the Contractor (or subcontractor or supplier, where applicable) shall purchase from the General Services Administration (GSA) a quantity of aluminum pig or ingot equal in weight to the gross weight of aluminum products constituting, or used in the production of, the items to be delivered under this contract. Such purchase shall be in accordance with the terms and conditions of sale prescribed therefor by GSA. Each order placed with GSA pursuant to this clause shall state that it is placed in accordance therewith and shall be sent to:

Director, Stockpile Disposal Division, Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

Aluminum purchased pursuant to this clause may be used in any manner the Contractor desires and need not be earmarked in any way after delivery to the Contractor, nor physically incorporated in the items to be delivered hereunder.

(c) To the extent the Contractor (or subcontractor or supplier, where applicable) places subcontracts or purchase orders for aluminum products or for items other than aluminum products and containing aluminum in any form, he is not required with respect to such subcontracts or purchase orders to purchase aluminum from the GSA. However, he agrees to incorporate this clause, except paragraph (d):

(i) In any such subcontract or purchase order for aluminum products in the total amount of \$500 or more, or

(ii) In any such subcontract or purchase order in the total amount of \$25,000 or more for any items containing aluminum in any form where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more.

(d) The Contractor shall furnish to the GSA, calendar quarter summaries (within 30 days following the close of the applicable quarter) of all subcontracts and purchase orders placed by him pursuant to (c) (i) above that will identify (i) each aluminum product supplier involved, (ii) the quantity (by weight) of aluminum products, and (iii) the contract number applicable to specific quantities. The requirements of this paragraph (d) are applicable only to the prime Contractor and not to any subcontractor or other supplier hereunder. This reporting requirement has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(e) The requirements of this clause are not intended to preclude basic agreements or other arrangements between the parties to any contracts (subcontracts or purchase orders) subject to this clause that will permit reference in such contracts to the applicability of the requirements of this clause, without the need for physically incorporating this clause in its entirety in each affected subcontract or purchase order.

(f) In placing subcontracts and purchase orders subject to the clause, the Contractor and all subcontractors and suppliers are authorized and encouraged to consolidate aluminum product purchases hereunder with other rated order purchases (ACM, DO, or DX) and other identifiable Government orders so as to apply the requirements of this clause to the total purchase. Otherwise, it is required either that aluminum product purchases subject to this clause be separately made, or, if consolidated with other aluminum product purchases, that the quantities (by weights) of aluminum products subject to this clause be separately set forth in the purchase document and identified as subject to this clause.

(g) Required purchases of aluminum from GSA by Contractors, subcontractors, or suppliers, shall be made within 90 days from the date (i) of final delivery pursuant to a contract, subcontract, or purchase order containing the requirements of this clause, or (ii) when the Contractor, subcontractor, or supplier, has completed deliveries of aluminum products aggregating 100,000 pounds, whichever is earlier: *Provided, however*, That any Contractor, subcontractor, or supplier, may defer required purchases of aluminum for the purpose of consolidating purchases to meet the requirement of two or more contracts, subcontracts, or purchase

orders containing this clause until 90 days after the aggregate purchase requirements of such contracts, subcontracts or purchase orders equal the minimum order quantities established by GSA (approximately 10,000 pounds or more). Successive consolidated purchases thereafter may be made at any time within 90 days intervals. The 90-day limitations may be extended upon approval in writing by the GSA.

(h) Certain producers of aluminum have entered into contracts with GSA effective as of November 1965 under which they have made long term commitments to purchase certain minimum and maximum quantities of aluminum from that Agency. The obligations of such producers under this clause shall be governed by the provisions of those contracts to the extent of any inconsistency.

(i) All purchases made pursuant to this clause, other than from GSA, which are rated (ACM, DO, or DX) in accordance with DMS Regulation 1, NPA Order M-5A and BDSA Regulation 2, and are subject to the provisions of those regulations concerning the maintenance of records, rights of inspection and audit, and the penalty provisions contained therein for willful noncompliance.

#### § 18-1.327-3 Construction.

The clause contained in § 18-1.327-2 shall be modified by deletion of paragraph (c) thereof and substitution of the following paragraph in all contracts for construction:

(c) To the extent the Contractor or subcontractor or supplier, where applicable places subcontracts or purchase orders for aluminum products, or for items other than aluminum products and containing aluminum in any form, or for construction where the subcontractor is to furnish materials containing aluminum in any form, he is not required with respect to such subcontracts or purchase orders to purchase aluminum from the GSA. However, he agrees to incorporate this clause, except paragraph (d):

(i) In any such subcontract or purchase order for aluminum products in the total amount of \$500 or more, or

(ii) In any such subcontract or purchase order in the total amount of \$25,000 or more for any items containing aluminum in any form where the quantity of aluminum products used in the production of such items is estimated to be 10,000 pounds or more, or

(iii) Construction, where the materials are to be supplied by the subcontractor and the total value of such materials containing aluminum (in any form) is estimated to be \$25,000 or more, and where the quantity, of aluminum products used in the production of such items is estimated to be 10,000 pounds or more.

#### § 18-1.350 Nondiscrimination clause—Government leases.

##### § 18-1.350-1 Policy.

It is NASA policy to include a "Facilities Nondiscrimination" clause in leases on which NASA is the lessee. This policy has been adopted because Federal employees belonging to minority groups and other members of minority groups doing business with the Federal Government in some parts of the country have been denied the use of public facilities located in buildings where the Government leases office space.

##### § 18-1.350-2 Use of clause.

The following "Facilities Nondiscrimination" clause shall be incorporated in all future leases where (a) the total

rental is in excess of \$10,000 per year, or (b) the total rental under the new lease, combined with the total rental under all other NASA leases of space in the same building, exceeds \$10,000 per year.

#### FACILITIES NONDISCRIMINATION (MARCH 1969)

(1) As used in this clause, the term "facility" means stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

(2) The lessor agrees that he will not discriminate by segregation or otherwise against any person or persons because of race, color, religion, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants, their employees, customers, patients, clients, guests, and invitees.

(3) It is agreed that the lessor's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

(4) It is agreed that from and after the date hereof the lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of, the foregoing provisions of this clause in every such agreement or concession pursuant to which any person other than the lessor operates or has the right to operate any facility. Nothing herein contained, however, shall be deemed to require the lessor to include or require the inclusion of the foregoing provisions of this clause in any existing agreement or concession arrangement or one in which the contracting party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The lessor also agrees that he will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as NASA may direct as a means of enforcing the intent of this clause, including, but not limited to, termination of the agreement or concession and institution of court action.

##### § 18-1.350-3 Lease amendments and renewals.

(a) Prior to executing any amendment to a lease or exercising a lease renewal option, where the total rental exceeds \$10,000 per year, the lessor shall be requested to enter into a supplemental agreement to incorporate in the lease, as part of the rental consideration, the "Facilities Nondiscrimination" clause set forth in § 18-1.350-2.

(b) The "Facilities Nondiscrimination" clause shall also be incorporated when the total aggregate rental of multiple NASA leases in a building is in excess of \$10,000 per year.

(c) If agreement cannot be reached, the matter shall be submitted to the Director of Procurement with the recommendations of the head of the installation, at least 30 days prior to the date on which the amendment is to be executed or the notice of renewal must be issued.

**§ 18-1.350-4 Invitation for bids or request for proposals involving leases.**

The Facilities Nondiscrimination clause, as set forth in § 18-1.350-2, shall be preceded by a paragraph substantially as follows, in all invitations for bids or requests for proposals involving leases:

If the total rental under this lease exceeds \$10,000 per year, or if the total rental under this lease combined with the total rental under all other NASA leases of space in the building in which the space covered by this lease is located exceeds \$10,000 per year, the lessor agrees to comply with the following provisions: (August 1963)

**§ 18-1.351 Procurement of potentially hazardous items.**

(a) Many of NASA's procurements involve items which are potentially hazardous; e.g., squibs used in initiating rocket motors. In order to minimize personal injury and property damage, it is the general policy of NASA to acquire detailed design information and drawings for potentially hazardous items for the benefit of users of the equipment on NASA contracts.

(b) Any invitation for bids or request for proposals involving the procurement of potentially hazardous items shall contain as a line item, and the resulting contract shall contain as a line item of the Schedule, a requirement for the contractor or subcontractor to furnish complete design information and drawings showing all details of construction, including materials, for those items or components which are designated as potentially hazardous. NASA has designated the following as "potentially hazardous":

Electrosensitive initiating devices (squibs).

(c) The invitation for bids or request for proposals and the contract shall also contain:

(1) Appropriate provisions concerning rights to use the design information, data, etc., in accordance with § 18-9.204-52, and

(2) The following clause:

**POTENTIALLY HAZARDOUS ITEMS  
(NOVEMBER 1964)**

(a) The Contractor agrees to furnish complete design information and drawings showing all details of construction, including materials, for the items or components which are designated in the Schedule of this contract as potentially hazardous to employees and subcontractors who are to perform any work in connection with installing such items or components in combination with other equipment, or in testing such items or components either alone or in combination with other components, items or equipment, or in handling such items or components; and to inform such employees or subcontractors of the potentially hazardous nature of such items or components; before requesting or directing the performance of such work.

(b) The Contractor shall include this clause including this paragraph (b) in each subcontract he awards under the contract which calls for the manufacture or handling of the items or components designated in paragraph (a) as potentially hazardous.

**§ 18-1.352 Special considerations in research and development contracts.**

Research and development contracts shall, when source selection has been substantially predicated upon the possession by a given contractor of special capabilities, as represented by either key personnel or facilities, contain substantially the following clause setting forth the designated personnel and facilities:

**KEY PERSONNEL AND FACILITIES  
(JUNE 1967)**

The personnel and/or facilities listed below (or as specified in the schedule of this contract) are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals or facilities to other programs the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: *Provided*, That the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the Contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

**§ 18-1.353 Construction contracts—disclosure of government estimate.**

(a) Except as provided in paragraph (c) of this section, in contracting for construction, access to or disclosure of information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate.

(b) If the nature of the information contained in the Government estimate requires security classification, it shall be handled in accordance with applicable security regulations.

(c) When the nature of the information contained in the Government estimate does not require security classification, access to or disclosure of information concerning the Government estimate shall be furnished in accordance with the following:

(1) If the procurement is to be made by means of formal advertising, a copy of the Government estimate shall be sealed and kept locked with the bids until bid opening. Immediately after the bids have been opened, read, and recorded, the estimate shall be opened, read, and recorded in the same manner as the bids.

(2) In the case of a negotiated procurement, after the award has been made, the Government estimate may be furnished to individuals or firms upon their request.

**§ 18-1.354 Procurements requiring immediate "on call" contractor performance.**

(a) Frequently it becomes essential to the needs of NASA to contract for certain services which require immediate performance by a contractor after a minimum prior notice to proceed. Typical of such requirements are contracts for engineering services; maintenance, repair or overhaul of specialized equipment; and printing or reproduction and data processing services to be furnished on a "call basis" where time is of the essence to meet priority requirements.

(b) When soliciting prospective contractors to perform services of this nature, the NASA policy of obtaining competition to the maximum practicable extent will be observed. Geographic limitations imposed on prospective contractors are apt to appear arbitrary to the business community and therefore are proper only in those cases where such limitations are demonstrably justifiable. Even in those circumstances, however, no firm desiring to compete for the procurement shall be denied the opportunity to do so, merely because it is located outside the geographic area. Such firms will be permitted to submit bids or proposals and will be considered for award, if otherwise qualified, provided they can substantiate their capability to establish a facility in a location which complies with any such required geographical limitation.

(c) A preferred method of obtaining services or supplies, which are required on a prompt response basis, is by clearly setting forth in the request for proposals or invitation for bids such requirement in terms of maximum time which may elapse between placement of the "order" or "call" and delivery date. Such time limitations, when required by the nature of the procurement, will normally meet the needs of NASA for prompt delivery without introducing any unnecessarily restrictive criteria on the competitive field of prospective contractors.

(d) Invitations for bid or requests for proposal which contemplate either a geographical area or time of performance limitation will be reviewed and approved by the Procurement Officer, or his designee, prior to distribution.

**§ 18-1.355 Civil Rights Act of 1964—nondiscrimination in federally assisted programs.**

(a) Section 602 of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d-1) provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance. The Act also requires that each Government agency, which is empowered to extend such financial assistance, shall issue rules or regulations effectuating title VI (sections 601-605) with respect to financial assistance programs or activities administered by the

agency. NASA's Civil Rights Regulation is published in the FEDERAL REGISTER of January 9, 1965, 30 F.R. 301-305, 14 CFR 1250.

(b) Contracts with nonprofit institutions of higher education or with nonprofit organizations whose primary purpose is the conduct of scientific research, where title to equipment purchased with funds under such contracts may be vested in such institutions or organizations under the authority of section 2 of Public Law 85-934 (42 U.S.C. 1892), are within the purview of title VI of the Civil Rights Act.

(c) No contract of the type described in (b) above shall be entered into unless and until an "Assurance of Compliance" (NASA Form 1206) has been obtained, or until proceedings pursuant to section 1250.107(c) of the NASA Civil Rights Regulation have been conducted and terminated in favor of the prospective contractor. NASA shall not be obligated to provide assistance in such a case during the pendency of any administrative proceedings under the NASA Civil Rights Regulation.

(d) Requests for proposals subject to title VI shall include a copy of the "Assurance of Compliance" (NASA Form 1260) and shall require the proposer either to execute such an assurance as part of his proposal or to identify and refer to a prescribed assurance previously submitted. All assurances will be forwarded promptly to the Headquarters Contracts Division, NASA Headquarters (Code DHC). Copies of the assurance should be retained for the contract file.

(e) If a proposal (including unsolicited proposals) relating to a program subject to title VI does not contain or refer to a prescribed assurance and it appears that the proposer is unaware of the requirement for the assurance, prior to entering into any contract with the proposer, the proposer shall be furnished a copy of the desired form of assurance and shall be informed of the requirements of the NASA Civil Rights Regulation and this § 18-1.355.

(f) Further implementation, setting forth procedures and guidance, and assigning responsibilities to NASA officials, is contained in NASA Management Instruction 2090.1, "Civil Rights Act—Non-discrimination in Federal Assisted Programs of NASA."

#### § 18-1.356 Procurement request.

(a) Procurement requests will be prepared and submitted to the procurement office in accordance with the provisions of NASA Management Instruction 5101.12, "Policy and Procedures Concerning Procurement Requests."

(b) Except in unusual circumstances, the procurement office will not issue invitations for bids or requests for proposals until an approved procurement request, containing a certification that funds are available, has been received. However, the procurement office may take all necessary actions up to the point of contract obligation prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(3) The Procurement Officer authorizes such action prior to the issuance of the invitation for bids or request for proposals.

(c) The procurement request shall be assigned within the procurement office to a negotiator who will be responsible to the contracting officer for conducting the business aspects of the transaction. The negotiator will review the request to insure that it complies with NASA Management Instruction 5101.12, this Regulation, and that the information contained in the request is in sufficient detail to prepare the invitation for bids or the request for proposals. Uncertain requirements or inconsistencies in the procurement request will be discussed with the initiator of the request and clarified prior to the initiation of procurement action.

#### § 18-1.357 Procurement of liquid hydrogen.

(a) To insure that adequate supplies of liquid hydrogen are readily available to meet current and future program requirements, NASA has established contractual arrangements with primary supply sources located at Michoud, La., and Sacramento, Calif. These contracts will be used to the maximum extent practicable in supplying both in-house and contractor requirements for liquid hydrogen.

(b) Responsibility for administration of the sources and management of production and distribution operations have been vested in:

(1) The Marshall Space Flight Center for the Louisiana source; and

(2) The NASA Pasadena Office, for the California sources.

(c) Requests for furnishing liquid hydrogen will be submitted to either the Marshall Space Flight Center or to the NASA Pasadena Office. The supply source used will be the one located nearest the receiving destination.

#### § 18-1.358 Contractor financing by letter of credit.

Any contract with a nonprofit institution (including an educational institution) which, in accordance with the policy established in FMM 9280-1, is to provide advance funding by the Letter of Credit procedure, shall contain the clause set forth below:

##### CONTRACTOR FINANCING BY LETTER OF CREDIT (MARCH 1970)

(a) The advance funds will be provided in accordance with the letter of credit procedure set forth in paragraphs 9280-1 through 9280-8 of the NASA Financial Management Manual. The Contractor shall use these procedures to obtain advance funds for allowable costs under this contract.

(b) In accordance with those procedures, a Letter of Credit will be issued in an amount determined by the Contracting Officer based on the needs of the Contractor. Subsequent

amendments to the Letter of Credit will be on the basis of: (1) Quarterly NASA Form 1031 reports submitted by the Contractor and as approved by the Contracting Officer, and (2) amendments to the contract. In no instance will the advance funds provided by the letter of credit procedure exceed the amount of the contract as from time to time amended, less the amount of withholding provided therein.

(c) The funds provided by the letter of credit procedure shall be used by the Contractor solely for the purposes of making payments for items of allowable costs as defined in this contract, or to reimburse the Contractor for such items of allowable cost and for making payments for such other costs as the Contracting Officer otherwise has authority to approve, and does approve in writing.

(d) The Contractor may draw on the Letter of Credit using payment vouchers as follows:

(1) Payment vouchers may be executed only for the purpose of obtaining funds in the minimum amounts necessary for the following purposes: (i) Making payments for items of allowable costs as defined in this contract; (ii) reimbursing the Contractor for such items of allowable costs; and (iii) for making payments for such other costs as the Contracting Officer otherwise has authority to approve, and does approve in writing; and the funds so obtained may be used only for such purposes.

(2) Payment vouchers drawn should be timed to be in accordance with the actual cash requirements of the contractor in carrying out the purpose of the contract.

(e) NASA Form 1031 shall be submitted by the 20th of the month following the quarter being reported.

(f) The Contractor may at any time repay all or any part of the funds or credit obtained under the Letter of Credit. When so requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs or in excess of the contract price or estimated cost as revised from time to time.

(g) If upon completion or termination of this contract all amounts obtained by the Contractor under the Letter of Credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due or which may be due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

(h) Notwithstanding any other provisions of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(i) Any and all advance payments made under this contract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for

any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, *inter alia*, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

**§ 18-1.359 Aircraft noise research and development programs.**

NASA and the Department of Transportation have executed an agreement (NMI 1052.103A) to coordinate their research and development efforts in aircraft noise reduction, control, prediction techniques and other aircraft noise related problems. Proposed procurement actions relating to this program will be coordinated with the Deputy Associate Administrator (Aeronautics), NASA Headquarters in accordance with the provisions of NASA Management Instruction 1052.103A.

**Subpart 18-1.4—Appointment and Authority of Contracting Officers**

**§ 18-1.400 Scope of subpart.**

This subpart deals with the appointment and procurement authority of contracting officers. It also imposes limitations upon the authority of contracting officers to enter into contracts. For the purpose of this subpart, the term "contracting officer" does not include representatives of the contracting officer.

**§ 18-1.401 Authority of contracting officers.**

Contracting officers are authorized to enter into or modify contracts for supplies or services, including construction, on behalf of the Government and in the name of the United States of America, by formal advertising, negotiation, or by other authorized method of procurement, and to administer such contracts, in accordance with applicable laws and this chapter. The foregoing authorization is subject to the requirements prescribed in § 18-1.402 and any further limitations, consistent with this chapter imposed by the appointing authority.

**§ 18-1.402 Requirements to be met before entering into contracts.**

(a) *General.* Whether the procurement is to be effected by formal advertising or by negotiation, a contract or modification may be entered into by a contracting officer only if:

(1) All applicable requirements of law, NASA regulations, and instructions of the installation have been met;

(2) Required approvals have been obtained from the technical and management authorities at the installation concerned; this includes, prior to the incurrence of an obligation, obtaining approval as to the availability of funds;

(3) The contract is written on a standard or an approved form of contract; and

(4) Approval of deviations from standard or authorized contract clauses has been obtained from the Director of Procurement (see § 18-1.109).

(b) *Special requirements for negotiated contracts.* In addition to the requirements in paragraph (a) of this section, no negotiated contract shall be entered into until the determinations and findings required by Subparts 18-3.2 and 18-3.3, with respect to the circumstances justifying negotiation and with respect to any use of a special method of contracting have been made.

**§ 18-1.403 Selection, appointment, and termination of appointment of contracting officers.**

The selection, appointment and termination of the appointment of contracting officers shall be made only by the Administrator or his designees, and by subsequent designees to whom such authority has been redelegated.

**§ 18-1.403-1 Selection.**

(a) *Considerations.* In selecting contracting officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, reputation and ethics.

(b) *Evaluation of experience, training, and education.* In considering experience, training, and education, the following shall be evaluated:

(1) Experience in a Government procurement office, commercial procurement, or related fields;

(2) Formal education or special training in business administration, law, accounting, or related fields;

(3) Completion of specialized courses in the field of Government procurement;

(4) Knowledge of the provisions of this chapter and of other applicable regulations; and

(5) Where the appointment of contracting officers for construction contracts is involved, experience in the construction field, including the administration of construction contracts.

**§ 18-1.403-2 Appointment.**

(a) Except for those individuals who are authorized to enter into contracts by virtue of their position, appointment of contracting officers shall be made on NASA Form 1350, Certificate of Appoint-

ment, issued by the appointing official. Any limitations on the scope of the authority to be exercised by the contracting officer, other than those contained in this chapter, shall be entered on the face of the certificate. Certificates may be serially numbered.

(b) The office of each appointing authority shall maintain a file of all documents (such as résumés, references, and records of training) considered in the selection of each contracting officer.

**§ 18-1.403-3 Termination of appointment.**

(a) *Automatic termination.* Unless the Certificate of Appointment of a contracting officer contains other provision for automatic termination, the appointment shall remain in effect, unless sooner revoked, until the contracting officer is reassigned or his employment is terminated.

(b) *Revocation.* The appointment of a contracting officer may be revoked at any time by the appointing authority, or higher appointing authority, or any successor to either, but no such revocation shall operate retroactively. Revocation of the appointment shall be made by letter, reading substantially as follows:

Date \_\_\_\_\_

To: (Name, grade and position title.)  
 From: (Appointing Authority.)  
 Subject: Termination of Appointment as Contracting Officer, Certificate of Appointment, Serial No. \_\_\_\_\_

Your appointment as Contracting Officer contained in the subject Certificate is hereby terminated effective \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
 (Signature and title)

**§ 18-1.403-4 Modification of authority.**

To accomplish modification of a contracting officer's authority, his present appointment shall be revoked, and a new certificate issued.

**§ 18-1.403-5 Assignment of duties to contracting officers.**

In assignment of duties, including execution and administration of contracts, consideration shall be given to the ability, training, and experience of the contracting officer. Duties, involving contracts of large dollar value and complexity, shall be given only to personnel with commensurate experience, training, and ability.

**Subpart 18-1.5—Contingent or Other Fees**

**§ 18-1.500 Scope of subpart.**

This subpart sets forth the procedures to be followed and prescribes the form to be used for obtaining information concerning contingent or other fees paid by contractors for soliciting or securing contracts.

**§ 18-1.502 Applicability.**

This subpart applies to all contracts.

**§ 18-1.503 Covenant against contingent fees clause.**

Every contract, except when Standard Forms 19 and 19A are used for formally

advertised construction contracts, shall contain the clause set forth below:

**COVENANT AGAINST CONTINGENT FEES  
(FEBRUARY 1962)**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**§ 18-1.504 Improper influence.**

The term "improper influence" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

**§ 18-1.505 General principles and standards applicable to the covenant.**

The principles and standards set forth in this subpart are intended to be used as a guide in the negotiation, award, administration, and enforcement of all contracts.

**§ 18-1.505-1 Contingent character of the fee.**

Any fee, whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

**§ 18-1.505-2 Exceptions to the prohibition of the covenant.**

Excepted from the prohibition of the covenant are "bona fide employees" and "bona fide established or selling agencies maintained by the contractor for the purpose of securing business."

**§ 18-1.505-3 Bona fide employee.**

The term "bona fide employee," for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed in good faith by a concern to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in § 18-1.505-4, except paragraph (d) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant. (However, in

applying such factors, the word "employee" shall be substituted for the word or words "agent" and "selling agency" as they appear throughout § 18-1.505-4, except paragraph (d) thereof.)

(a) A person may be a bona fide employee whether his compensation is on a fixed salary basis, or, when customary in the trade, on a percentage, commission, or other contingent basis or a combination of the foregoing.

(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

**§ 18-1.505-4 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.**

In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth in paragraphs (a) through (e) of this section shall be considered. They are necessarily incapable of exact measurement or precise definition, and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(a) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, the services of the agent other than actual solicitation should be considered; for example, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

(b) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(c) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify a newly established contractor-agent relationship where a continuing relationship is contemplated by the parties.

(d) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indications of the conduct of a regular business.

(e) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities, is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized. However, any agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.

**§ 18-1.505-5 Fees for information.**

Contingent fees paid for information leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

**§ 18-1.506 Representation and agreement required from prospective contractors.**

(a) Except as provided in § 18-1.507-2, contracting officers shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer.

(b) When an invitation for bids is issued, the requirements of paragraph (a) of this section shall be accomplished by requiring the bidder to check the appropriate boxes in the following statement to be included in the invitation or bid form (also, see § 18-1.507-50):

Bidder or offeror represents: (a) That he  has,  has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder or offeror) to solicit or secure this

contract, and (b) that he  has,  has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder or offeror) any fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of this contract, and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 44, Subpart 1-1.5.) (March 1970)

(c) When a procurement is to be effected by negotiation, the requirements of paragraph (a) of this section will be accomplished by requiring the offeror either to (1) check the appropriate boxes in the above statement, or (2) execute a written representation which substantially conforms with the above statement. This may be accomplished by including the above statement in the request for proposals or quotations or by obtaining an appropriate statement during the course of negotiations (also see § 18-1.507-50).

**§ 18-1.506-1 Interpretation of the representation.**

(a) For the purpose of the representation and agreement required from the prospective contractor, as described in § 18-1.506, the definition of "bona fide employee" is as specified in § 18-1.505-3.

(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retainer.

(c) If the representation would otherwise be answered in the affirmative, the fact that the person employed or retained by the bidder or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answering in the negative.

**§ 18-1.507 Use of Standard Form 119.**

Except as provided in § 18-1.507-2, Standard Form 119 shall be used without deviation when either part of the inquiry provided for by § 18-1.506 is answered in the affirmative. The form shall also be used without deviation in any other case when the contracting officer desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Normally, submission of the form will be required only of successful bidders and contractors.

**§ 18-1.507-1 Statement in lieu of form.**

Any bidder or proposed contractor who has previously furnished a Standard Form 119 to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid with, or submit in connection with the proposed contract, a signed statement:

(a) Indicating when such completed form was previously furnished;

(b) Identifying by number the previous invitation or contract in connection with which such form was submitted; and

(c) Representing that the statements in such previously furnished form are applicable to such subsequent bid or contract.

In such case, submission of an additional completed Standard Form 119 need not be required. See § 18-1.507-50.

**§ 18-1.507-2 Exceptions.**

The inquiry and agreement specified in § 18-1.506 need not be made and submission of Standard Form 119 need not be requested in connection with the following:

(a) Any advertised contract in which the aggregate amount involved does not exceed \$25,000;

(b) Any negotiated contract in which the aggregate amount involved does not exceed \$5,000;

(c) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000;

(d) Any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis;

(e) Any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply; and

(f) Contracts to be made in foreign countries.

**§ 18-1.507-50 Additional provision.**

(a) In addition to the statement to be included in the invitation or bid form required by § 18-1.506, contracting officers may add the following provision to the invitation or bid form:

If the bidder, by checking the appropriate box provided therefor in his bid, has represented that he has employed or retained a company or person (other than a full-time bona fide employee) to solicit or secure this contract, he may be requested by the Contracting Officer to furnish with his bid a completed Standard Form No. 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract). If the bidder has previously furnished a complete Standard Form No. 119 to the office issuing this invitation for bids, he may accompany his bid with a signed statement, in lieu of Standard Form 119, (a) indicating when such completed Form was previously furnished; (b) identifying by number the previous invitation or contract in connection with which such Form was submitted; and (c) representing that the statements in such previously furnished Form are applicable to this bid. (February 1962)

(b) The above statement, suitably modified, may be included in the request for proposals or quotations, in addition to the statement provided for in § 18-1.506(c).

**§ 18-1.508 Enforcement.**

The contracting officer shall take the necessary steps to insure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as prescribed in § 18-1.506.

(a) If the indicated successful bidder or proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted in accordance with the procedures set forth in this Regulation.

(b) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with the procedures set forth in this chapter need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract, unless the Director of Procurement considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(c) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement as set forth in § 18-1.506, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement after such opportunity has been afforded shall require rejection of the bid or offer.

**§ 18-1.508-1 Failure or refusal to furnish Standard Form 119.**

If the otherwise successful bidder or contractor, upon request, fails or refuses to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in § 18-1.507-1, one of the following actions shall be taken:

(a) If an award has not been made or an offer accepted, the matter shall be referred to the procurement officer for a determination as to whether the bid or offer should be rejected; or

(b) If the contract has been awarded or offer accepted, the matter shall be referred to the Director of Procurement, supported by a statement and summary of all pertinent facts and appropriate recommendations, for a determination as to what actions should be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor.

**§ 18-1.508-2 Misrepresentations or violations of the covenant against contingent fees.**

In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant

## RULES AND REGULATIONS

impropriety, one or more of the following actions shall be taken:

(a) If an award has not been made or an offer accepted, the matter shall be referred to the procurement officer for a determination as to whether the bid or offer should be rejected; or

(b) If an award has been made or an offer accepted, the matter shall be referred to the Director of Procurement, supported by a statement and summary of all pertinent facts and appropriate recommendations, for a determination as to what actions should be taken, such as—

(1) Enforcing the covenant in accordance with its terms; that is, as the best interest of the Government may appear, annul the contract without liability or recover the full amount of the fee involved;

(2) Considering the eligibility of the contractor as a future contractor; or

(3) Referring the case to the Department of Justice. (See § 18-1.111.)

#### § 18-1.509 Preservation of records.

Contracting officers shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119, or statement in lieu of the form, with a record of any other pertinent data, including data as to action taken.

#### § 18-1.550 Responsibility for protecting information contained in completed Standard Form 119.

Information contained in completed Standard Form 119 shall be considered private and personal. Personnel having access to this information shall not discuss or transmit the information gained by them to any other person not entitled or authorized to have access to such information.

#### Subpart 18-1.6—Debarred, Ineligible, and Suspended Bidders

##### § 18-1.600 Scope of subpart and definitions.

(a) *Scope.* This subpart prescribes policies and procedures relating to the debarment of bidders for any cause, ineligibility of bidders under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)), and the suspension of bidders for alleged fraud or other criminal conduct.

(b) *Definition of Affiliates.* Business concerns are considered affiliates of each other when, either directly or indirectly:

(1) One concern or individual controls or has the power to control another; or

(2) A third party controls or has the power to control both.

In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors, including common ownership, common management, and contractual relationships.

##### § 18-1.601 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

###### § 18-1.601-1 General.

NASA will establish and maintain a list of firms and individuals whom it has debarred or suspended, to whom contract awards of any character, including sales, will not be made, and from whom bids or proposals will not be solicited as provided in this subpart. This list will supplement the Joint Consolidated List referred to in § 18-1.601-3. The Procurement Office, NASA Headquarters is responsible for the establishment and maintenance of the NASA list and will issue copies of this list to each procurement office.

###### § 18-1.601-2 Information contained in NASA list.

The NASA list shall show as a minimum the following information:

(a) The names (in alphabetical order) of those firms or individuals debarred, ineligible, or suspended with appropriate cross-references where more than one name is involved in a single action;

(b) The basis of authority for each action;

(c) The extent of restrictions imposed; and

(d) The termination date for each debarred listing.

###### § 18-1.601-3 Joint consolidated list.

The Department of the Army is responsible for the issuance of a Joint Consolidated List of firms and individuals ineligible, disqualified, debarred, suspended, or otherwise prohibited from entering into contractual relationship with the Departments of the Army, the Navy, and the Air Force. For the purposes of economy and uniformity, since the Military Departments contract essentially with the same segments of industry as NASA, the Joint Consolidated List is hereby adopted by NASA for its use, as supplemented by the list established and maintained by NASA. The Joint Consolidated List contains, as a minimum, the same type of information included in the NASA list (see § 18-1.601-2). Arrangements have been made with the Department of the Army to furnish NASA Headquarters with copies of the Joint Consolidated List. The Procurement Office, NASA Headquarters (Code KDP-1) will issue copies of this list to each procurement office.

###### § 18-1.601-4 Protection of lists.

The NASA list shall be marked with and treated in accordance with the protective term, "Limit Access to Government Personnel," unless details are included which require a security classification. The Joint Consolidated List shall be treated in accordance with the protective term set forth thereon and shall be protected to prevent inspection of the contents by anyone other than Government personnel required to have access

thereto. All correspondence relating to the NASA list and the Joint Consolidated List shall be marked and treated in accordance with the protective term, "Limit Access to Government Personnel," unless details are included which require a security classification, except that correspondence furnished to firms or individuals in accordance with § 18-1.604-4 or § 18-1.605-6 will not include any protective markings.

###### § 18-1.601-50 Authority for making determinations.

(a) The Administrator or his authorized representative shall, upon appropriate recommendation, determine whether a firm or individual will be administratively debarred or suspended and included in the NASA list. The Administrator, by NASA Management Instruction 5101.11, "Power and Authority—To Debar or Suspend Firms and Individuals", has designated the Director of Procurement as an authorized representative of the Administrator for the purpose of making final determinations in respect to NASA debarments made pursuant to §§ 18-1.603(a)(1)(iii) and 18-1.604-1(b) and suspensions made pursuant to §§ 18-1.603(a)(4) and 18-1.605-2(b), including modifications and removals thereto. The debarment or suspension of firms or individuals is an administrative determination within the discretion of the Administrator or his authorized representative and each case will be decided upon its individual merits. The placement of a firm or individual on the list will be for the purpose of protecting the interest of the Government and not for punishment.

(b) In taking any action to debar or suspend a firm or an individual, the Director of Procurement will refer the proposed action to the Director, Inspections Division, NASA Headquarters, for comment and any necessary investigation. In addition, such action will be coordinated with the General Counsel and other staff offices or divisions, as appropriate.

###### § 18-1.601-51 Compliance with NASA list and joint consolidated list.

NASA procurement personnel shall comply with the prohibitions contained in the NASA list and the Joint Consolidated List.

###### § 18-1.602 Limitation.

No firm or individual will be included on the NASA list for causes or conditions other than those set forth in this subpart.

###### § 18-1.603 Grounds for listing and treatment to be accorded listed concerns.

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

(1) Type A includes debarments in any of the following categories:

(i) Those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(ii) Those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)) for violating the requirements of that Act; and

(iii) Those whom the Administrator or his authorized representative has determined to debar for any of the causes and under all of the conditions set forth in § 18-1.604.

Bids or proposals shall not be solicited from, nor invitations for bids or requests for proposals furnished to, nor contracts awarded to, firms or individuals who are listed as Type A and who are debarred because of Walsh-Healey or Davis-Bacon violations (subparagraphs (i) and (ii) of this paragraph). The same rules apply with respect to Type A listings within category (iii) above, except as set forth in paragraph (d) of this section, or unless the listing indicates that the debarment is not to apply to procurement contracts or sales contracts (see § 18-1.606).

(2) Type B includes firms or individuals whom the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of \$10,000 shall not be awarded to firms or individuals under Type B listings for those materials, articles, or equipment with respect to which the firm or individual has been found to be ineligible. NASA, as a matter of policy, applies the same rule to contracts of \$10,000 or less. However, bids or proposals may be solicited, and contracts in any amount may be awarded, for commodities with respect to which the firm or individual has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listings only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers, from receiving contracts subject to the Walsh-Healey Public Contracts Act.

(3) Type C includes firms or individuals whom the Administrator, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the Buy American Act clause required for construction contracts (see § 18-6.205). Bids or proposals for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be solicited from firms or individuals under Type C listings; nor shall contracts for such work be awarded to such firms or individuals. However, firms or individuals under Type C list-

ings may be solicited for bids or proposals and may be awarded contracts for other than the construction, alteration, or repair of public buildings or public works.

(4) Type D includes firms or individuals whom the Administrator or his authorized representative has determined to suspend for any of the causes and under all of the conditions set forth in § 18-1.605. Firms or individuals under Type D listings shall not be solicited for bids or proposals, nor awarded contracts, except as set forth in paragraph (d) of this section, or where the listing indicates that the suspension does not apply to procurement contracts or sales contracts (see § 18-1.606).

(5) Type E includes firms or individuals who have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes:

(i) Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276(c));

(ii) Contract Work Hours Standards Act (76 Stat. 357-360);

(iii) National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703);

(iv) Hospital Survey and Construction Act (60 Stat. 1040);

(v) Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101);

(vi) Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441);

(vii) School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251);

(viii) Federal Civil Defense Act of 1950 (64 Stat. 1245) as amended (50 U.S.C. 1245);

(ix) Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591); and

(x) Area Redevelopment Act of 1961 (75 Stat. 47) (42 U.S.C. 2501).

Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

(6) Type F includes firms or individuals who have been reported by the Secretary of Labor as ineligible for Government contracts for noncompliance with (I) the Equal Opportunity clause set forth in § 18-12.802-1, or (II) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18-12.802-2. Firms or individuals under Type F listings shall not be awarded contracts or be solicited for bids (see § 18-12.806-8).

(b) Administration of current contracts in all phases may be continued with a firm or individual, notwithstanding the listing of such firm or individual, unless otherwise prescribed by the Administrator or his authorized representative. However, payment of all or any part of funds due to or to become due shall be withheld when such action is determined to be in the best interest of the Government by the Administrator or his authorized representative. When it appears necessary to withhold payments to protect the interests of the Government, action to withhold payment under the contract shall be initiated promptly by the contracting officer and the matter

shall be referred to the Procurement Office, NASA Headquarters (Code KDP-1) for decision. No payments shall be made pending this decision.

(c) When a listed firm or an individual is proposed as a subcontractor, the contracting officer shall decline to consent to subcontracting with such firm or individual in any instance in which consent is required of the Government before the subcontract is made. If award of a subcontract to a listed firm or individual is considered in the best interest of the Government, the contracting officer, prior to approving such award, shall submit a written recommendation to the Office of Procurement, citing complete and detailed justification for the award. Based on such justification, the Director of Procurement may authorize an exception to the restrictions imposed by the listings. In the case of subcontracts already in effect, prime contractors may not be required to terminate subcontracts with a listed firm or individual unless provisions of the prime contract reserve to the Government such control over subcontracting permitting the Government to require their termination. If the Government has such control, the contracting officer shall decide whether such subcontracts should be continued or terminated and forward his recommendations to the procurement officer (see § 18-1.226) for an appropriate determination. The procurement officer shall decide whether it is in the best interests of the Government to continue or terminate such subcontracts, unless otherwise prescribed by the Director of Procurement.

(d) The Administrator or his authorized representative may authorize exceptions to the restrictions imposed by Type A(III) listings and Type D listings, including Type A(III) listings and Type D listings contained in the Joint Consolidated List, when it is determined that such action is in the best interest of the Government. In such cases, when it is considered necessary or advisable to solicit bids or proposals from, or to award a contract to, a listed firm or individual, the contracting officer shall submit a written recommendation to the Procurement Office, NASA Headquarters (Code KDP-1), citing complete and detailed justification for the proposed action. The recommendation will be based on such factors as (1) urgent delivery or performance schedules, or (2) inability to secure the supplies or services from other sources due to lead time, proprietary data, or lack of procurement data.

§ 18-1.604 Debarment of bidders.

§ 18-1.604-1 Authority in NASA to debar firms and individuals.

(a) The Administrator may, in the public interest, debar a firm or individual for any of the causes set forth in § 18-1.604-2.

(b) The Director of Procurement, as an authorized representative of the Administrator, is authorized to debar in the public interest a firm or an individual for any of the causes set forth in § 18-1.604-2, except for paragraph (c)

thereof, in accordance with the procedures set forth in this Subpart 18-16.

**§ 18-1.604-2 Causes for debarment.**

(a) Conviction by or a judgment obtained in a court of competent jurisdiction for:

(1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids or proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense, and all mitigating factors, shall be considered in making the decision to debar.

(b) Clear and convincing evidence of violation of contract provisions, as set forth below, when the violation is of a character so serious as to justify debarment action:

(1) Willful failure to perform in accordance with the specifications or delivery requirements in a contract;

(2) A history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts: *Provided*, That such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar (failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment); or

(3) Violation of the contractual provision against contingent fees.

(c) Any other causes affecting responsibility as a Government contractor of such serious and compelling nature as may be determined by the Administrator to justify debarment: *Provided*, That no firm or individual shall be debarred for failure to comply with (1) the Equal Opportunity clause set forth in § 18-12.802-1, or (2) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18-12.802-2, except as prescribed under § 18-12.806-7.

(d) Debarment for any of the above causes by some other executive agency of the Government. Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts of the original debarring agency.

**§ 18-1.604-3 Period and scope of debarment.**

(a) *Period of debarment.* All debarments by NASA shall be for a reasonable,

specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment will not exceed 3 years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period of any firm or individual who has been debarred by NASA for any of the causes set forth in § 18-1.604-2, the Director of Procurement will cause all of the facts and circumstances relating to the debarment to be reviewed. The debarment shall be removed at the expiration of the specified period, unless, on the basis of an evaluation of newly developed facts, it is determined that debarment for an additional period is required in order to protect the Government's interests. Where debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished the firm or individual in accordance with § 18-1.604-4. The debarment of a firm or individual may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the (1) Equal Opportunity clause set forth in § 18-12.802-1, or (2) the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18-12.802-2 (Type F), the names of such firms or individuals shall be removed from the NASA list (§ 18-1.601-1) upon receipt of notification from the Secretary of Labor that the eligibility of such firms or individuals has been reestablished.

(b) *Scope of debarment.* (1) Debarment may include all known affiliates of a firm or individual. For the definition of an affiliate, see § 18-1.600-2.

(2) An attempt shall be made to determine who are the affiliates of any firm or individual who is proposed to be debarred. Consideration shall be given to initiating debarment against such affiliates whenever the facts and circumstances justifying debarment of the firm or individual concerned would also justify debarment of such affiliates.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected whenever the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

**§ 18-1.604-4 Notice of debarment.**

(a) The firm or individual proposed for debarment shall be furnished with a written notice of the proposed debarment by the Director of Procurement, stating as a minimum:

(1) The fact that debarment is being considered;

(2) The reasons for the proposed debarment; and

(3) The period of time to be afforded to present information for consideration.

Information in opposition to a proposed debarment may be presented in person, in writing, or through representation. The period of time to be afforded to present information for consideration shall

be limited to 30 days unless the firm or individual requests and justifies additional time. When no additional time is requested, the debarment determination, including the notice to the firm or individual, shall be completed within 90 days. When additional time is requested and it is determined to grant such additional time, the 90-day period shall be adjusted accordingly. If the firm or individual is not under suspension, pursuant to § 18-1.605, the notice of proposed debarment will inform the firm or individual that no contracts shall be awarded to such firm or individual pending the debarment determination.

(b) If the firm or individual proposed for debarment has affiliates who are also proposed to be debarred, the procedures set forth in paragraph (a) of this section shall be applied to such affiliates.

(c) If debarment is effected, the firm or individual and the affiliates that have been debarred will be notified by the Director of Procurement, in writing, within 10 days after determination of debarment has been made. This notice will:

(1) Reference the earlier notice of proposed debarment;

(2) Specify the reasons for debarment; and

(3) State the period of debarment, including effective dates.

If, following the notice of proposed debarment, a determination is made that debarment will not be effected, the Director of Procurement will notify the firm or individual in writing accordingly.

(d) Copies of the notice of debarment and of any removals from such debarment will be furnished to the General Services Administration.

(e) All inquiries or correspondence from or in behalf of debarred contractors concerning their status, reasons for debarment action, etc., shall be forwarded to the Procurement Office, NASA Headquarters (Code KDP-1) for appropriate action.

**§ 18-1.604-50 Reporting procedures.**

(a) Procurement officers may submit reports recommending debarment of a firm or individual for any of the causes set forth in § 18-1.604-2. Such actions shall be coordinated with local counsel.

(b) Reports recommending debarment shall be submitted in triplicate to the Procurement Office, NASA Headquarters (Code KDP-1). Each such report shall contain a complete statement of the facts concerning the firm's or individual's dereliction, including affidavits, depositions, records of action, if applicable, and any other relevant data. Names and addresses of all persons having knowledge of the circumstances shall be included. Such reports shall include the names and addresses of all known affiliates of reported firms or individuals, together with the nature of such affiliation.

**§ 18-1.605 Suspension of bidders.**

**§ 18-1.605-1 General.**

Suspension of a firm or an individual is a drastic action which must be based upon adequate evidence rather than mere

accusation. In assessing adequate evidence, consideration should be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences which may be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. The suspension of a firm or individual is an administrative determination which may be modified when determined to be in the interest of the Government.

**§ 18-1.605-2 Authority in NASA to suspend firms or individuals.**

(a) The Administrator may, in the interest of the Government, suspend a firm or individual for any of the causes set forth in § 18-1.605-3.

(b) The Director of Procurement, as an authorized representative of the Administrator, is authorized to suspend in the interest of the Government a firm or individual for any of the causes set forth in § 18-1.605-3, except for paragraph (b) thereof, in accordance with the procedures set forth in this subpart.

**§ 18-1.605-3 Causes for suspension.**

A firm or individual may be suspended, whenever such suspension is determined to be in the interest of the Government, for the following causes:

(a) Whenever the firm or individual is suspected of—

(1) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract;

(2) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor.

(b) Any other causes of such serious and compelling nature as may be determined to justify suspension: *Provided*, That no firm or individual shall be suspended for failure to comply with the Equal Opportunity clause set forth in § 18-12.802-1, or the Equal Opportunity in Federally Assisted Construction Contracts clause set forth in § 18-12.802-2, except as prescribed under § 18-12.806-7.

**§ 18-1.605-4 Period and scope of suspension.**

(a) *Period of suspension.* All suspensions made by NASA shall be for a temporary period pending the completion of investigations and such legal proceedings as may ensue.

(1) In the event a firm or individual is suspended for any cause set forth in § 18-1.605-3(a) and prosecutive action is not initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an As-

sistant Attorney General requests continuation of the suspension. If such a request is received, the suspension may be continued for an additional 6 months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12-month period. In no event shall suspension continue beyond 18 months unless prosecutive action has been initiated within that period. Where prosecutive action is initiated, the suspension may continue until legal proceedings are completed.

(2) In the event a firm or an individual is suspended by the Administrator for any cause in accordance with § 18-1.605-3 (b), the period of suspension shall not exceed 90 days. The period of suspension may be extended for additional periods of 90 days upon a determination by the Administrator of the reasons and necessity therefor. However, in no event shall the total of any suspension under this § 18-1.605-4 exceed 1 year or be in addition to any period of suspension under subparagraph (1) above.

(3) Upon the completion of the legal proceedings under subparagraph (1) above or investigation under subparagraph (2) above, the suspension shall be removed and, if appropriate, changed to a debarment in accordance with § 18-1.604-2(a). Firms or individuals released from suspension and not debarred shall be replaced on appropriate bidders lists.

(b) *Scope of suspension.* (1) Suspension may include all known affiliates of a firm or individual. For the definition of an affiliate, see § 18-1.600-2.

(2) An attempt shall be made to determine who are the affiliates of any firm or individual who is proposed to be suspended. Consideration shall be given to suspending such affiliates whenever the facts and circumstances justifying suspension of the firm or individual concerned would also justify suspension of such affiliates.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected whenever the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

**§ 18-1.605-5 Restrictions during period of suspension.**

Suspended firms or individuals shall be subject to the provisions of § 18-1.603 (a) (4), (b), and (c).

**§ 18-1.605-6 Notice of suspension.**

(a) The firms or individuals who have been suspended will be furnished a written notice, by the Director of Procurement, of the suspension within 10 days after the effective date of the suspension. The notice of suspension will state:

(1) That the suspension is based on information that the firm or individual has committed irregularities of a serious nature in business dealings with the Government or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government, together with a description

of the nature of those irregularities, in general terms, without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and

(3) That bids and proposals will not be solicited from such firms or individuals and if received will not be considered, and awards of contracts may not be made, unless it is determined to be in the best interest of the Government by the Administrator or his authorized representative to do so.

(b) Copies of the notice of suspension and of any removal from such suspension shall be furnished to the Department of Justice.

(c) All inquiries or correspondence from or in behalf of suspended firms and individuals concerning their status, reasons for suspension, and so forth, shall be forwarded to the Procurement Office, NASA Headquarters (Code KDP-1) for appropriate action. Information beyond that stated in the notice of suspension concerning the reasons for suspension shall not be furnished to the contractor or his representatives until the Department of Justice has been advised of the inquiry.

**§ 18-1.605-50 Reporting procedures.**

(a) Procurement officers may submit reports recommending suspension of a firm or individual for any of the causes set forth in § 18-1.605-3. Such actions shall be coordinated with local counsel.

(b) Reports recommending suspension shall be submitted in triplicate to the Procurement Office, NASA Headquarters (Code KDP-1). Such reports shall contain a complete statement of the pertinent facts indicating alleged criminal conduct, fraudulent activity, or suspicion thereof, and shall be supported by appropriate exhibits, including copies of any contracts involved and any assignments of claims thereunder. Such reports shall include the names and addresses of all known affiliates of reported firms or individuals, together with the nature of such affiliation.

**§ 18-1.606 Limited debarment or suspension.**

When it is determined to debar or suspend a concern pursuant to § 18-1.604 or § 18-1.605, the Administrator or his authorized representative shall decide whether the debarment or suspension should extend to procurement contracts or sales contracts or to both. If the debarment or suspension is limited to either procurement contracts or sales contracts, the listing should so indicate. Likewise, a decision may be made to except from an administrative debarment or suspension a particular commodity or commodities or a particular division or subsidiary or other appropriate organizational element of the contractor where such action is considered to be in the best interests of the Government.

**§ 18-1.607 Interchange of debarment information.**

(a) The General Services Administration, in accordance with FPR 1-1.607(a),

is charged with compiling from the notice of debarments furnished it by NASA and other executive agencies a combined list of such debarments, including the basis of action, and distributing a copy of such list to NASA and all other executive agencies.

(b) The list furnished by General Services Administration shall be for information purposes only; it is not intended to take the place of, or be an addition to, the lists used by NASA.

(c) The Procurement Office, NASA Headquarters will check the combined list of debarred bidders furnished by the General Services Administration and consider firms or individuals listed thereon for inclusion upon the NASA list, in accordance with the provisions of this subpart.

(d) On specific request of the Director of Procurement, the General Services Administration has agreed to furnish to NASA, in accordance with FPR 1-1.607 (b), a copy of the notice reflecting the basis for debarment action taken by another agency pursuant to its regulations or under the Buy American Act (see § 18-1.603(a)(3) Type C listing). If desired, the Director of Procurement may make a direct inquiry concerning any debarment case to the agency which originated the action.

#### Subpart 18-1.7—Small Business Concerns

##### § 18-1.700 Scope of subpart.

This subpart, which applies only in the United States, its possessions, and Puerto Rico, implements the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451-2459), and the Small Business Act, as amended (15 U.S.C. 631 et seq.), and sets forth policy and procedures governing (a) contract awards to small business concerns, (b) relationships with the Small Business Administration (SBA), (c) small business set-asides, and (d) small business subcontracting.

##### § 18-1.701 Definitions.

The definitions of small business concerns are promulgated by the Small Business Administration. As used throughout this subpart, the following terms shall have the meanings set forth in this section. When a Procurement Office is in doubt as to the specific small business definition that should apply to a particular procurement, a written determination from the Small Business Administration field office having jurisdiction over the geographical area in which the contracting officer is located will be requested for inclusion in the procurement file.

##### § 18-1.701-1 Small business concern.

(a) (1) *General definition.* A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and with its affiliates, can further qualify under the criteria set forth in subparagraphs (2) and (3) of this paragraph. "Concern" means any business

entity organized for profit with a place of business in the United States, its possessions or Puerto Rico, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of a procurement of a product classified into two or more industries with different size standards, the smallest of such size standards shall be used in determining a bidder's size status.

(2) *Industry small business size standards.* In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the criteria established for the industries set forth below. Annual sales or annual receipts, as used throughout this subpart means the annual sales or annual receipts, less returns and allowances, of a concern and its affiliates during its most recently completed fiscal year.

(i) *Construction industries.* For construction, alteration, or repair (including painting and decorating), of buildings, bridges, roads, or other real property, the average annual receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed \$7,500,000. For dredging, the average annual receipts of the concern and its affiliates for its preceding 3 fiscal years must not exceed \$5 million. Also, in order to be eligible for a small business set-aside award on dredging contracts, the firms must perform the dredging of at least 40 percent of the yardage advertised in the plans and specifications with dredging equipment owned by the bidder or obtained from another small business dredging concern.

(ii) *Manufacturing industries—(a) Food canning and preserving industry.* For food canning and preserving, the number of employees of the concern and its affiliates must not exceed 500 persons, exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

(b) *Refined petroleum products.* Any concern bidding on a contract for a refined petroleum product other than paving mixture and blocks, asphalt felts and coatings, lubricating oils and greases, or products of petroleum and coal, not elsewhere classified, is classified as small if (1) (i) its number of employees does not exceed 1,000 persons; (ii) it does not have more than 30,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities; and (iii) the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feed stocks: *Provided, however,* That a petroleum refining concern which meets the requirements in (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offerer and the refiner of the product to be delivered to the Government which require exchanges in

a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in (iii) of this subparagraph: *And, provided further,* That the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under this subparagraph (b)(1).

(c) *Pneumatic tires.* For passenger cars, motorcycles, truck, bus, and off-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided,* That (1) the value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(d) *Passenger cars.* A company is classified as small if it is bidding on a contract for passenger cars: *Provided,* That (1) the value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50 percent of the value of its total worldwide manufacture or production of such passenger cars, (2) the value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of all such cars manufactured or produced in the United States during the said period, and (3) the value of the principal products which is manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

(e) *Rebuilding of machinery on a factory basis.* Any concern bidding on a contract for the rebuilding of machinery or equipment on a factory basis is classified as small business provided, the purpose of the rebuilding is to restore such machinery or equipment to as serviceable and as like new condition as possible and the number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item. The size standard is not limited to concerns who are manufacturers of the

original item but is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

(f) *Manufacturing industries listed in § 18-1.701-4.* For a product classified within an industry listed in § 18-1.701-4, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

(g) *Manufacturing industries not listed in § 18-1.701-4.* For a product classified within an industry not set forth in this paragraph or in § 18-1.701-4, the number of employees of the concern and its affiliates must not exceed 500 persons.

(iii) *Nonmanufacturing industries.* For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons, and in the case of a procurement set aside for small business (see § 18-1.706) or involving equal low bids (see § 18-2.407-6), or otherwise involving the preferential treatment of small business, it must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns. However, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters), shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. If the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread which has been finished by a small finisher. (Finishing of thread is defined as all dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.)

(iv) *Service industries—(a)* For services not elsewhere defined in this subpart the average annual sales or receipts of the concern and its affiliates for the preceding 3 fiscal years must not exceed \$1 million.

(b) Any concern bidding on a contract for engineering services (other than marine engineering services), motion picture production, or motion picture services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$5 million.

(c) Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$6 million.

(d) Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$3 million.

(e) Any concern bidding on a contract for base maintenance is classified as small if its average annual sales or re-

ceipts for its preceding 3 fiscal years do not exceed \$5 million. Base maintenance is defined in footnote 7 at the end of § 18-1.701-4.

(f) Any concern bidding on contracts for marine cargo handling services is classified as small if its annual sales or receipts do not exceed \$5 million for the preceding 3 fiscal years.

(g) Any concern bidding on a contract for food services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$3 million.

(h) (1) Any concern bidding on a contract for laundry services including linen supply, diaper services, and industrial laundering, is classified small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$3 million.

(2) Any concern bidding on a contract for cleaning and dyeing including rug cleaning services is classified small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$1 million.

(i) Any concern bidding on a contract for computer programming services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$3 million.

(j) Any concern bidding on a contract for flight training services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$5 million.

(k) Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$5 million.

(l) Any concern bidding on a contract for tire recapping services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$3 million.

(m) Any concern bidding on a contract for data processing services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$3 million.

(n) Any concern bidding on a contract for computer maintenance services is classified as small if its average annual sales or receipts for its preceding 3 fiscal years do not exceed \$5 million.

(v) *Transportation industries—(a)* General. Except as provided in (b) and (c) below, for passenger or freight transportation the number of employees of the concern and its affiliates must not exceed 500 persons.

(b) *Air transportation.* For air transportation, the number of employees of the concern and its affiliates must not exceed 1,000 persons.

(c) *Trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding.* For trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, the annual receipts of the concern and its affiliates must not exceed \$5 million. No such concern, however, will be denied small business status for the purpose of Government procurement solely because of its contractual relation-

ship with a large interstate van line if the concern's annual receipts have not exceeded \$5 million during its most recently completed fiscal year.

(vi) *Research, development or testing industries.* For research, development, or testing, which requires delivery of a manufactured product, a concern must (a) qualify as a small business manufacturer within the meaning of subdivision (ii) of this subparagraph for the industry in which the product is classified, or (b) qualify as a small business nonmanufacturer within the meaning of subparagraph (2) (iii) above. For research, development, or testing, which does not require delivery of a manufactured product, the number of employees of the concern and its affiliates must not exceed 500 persons.

(3) *Small business subcontractors.* In connection with subcontracts of \$2,500 or less, any concern will be considered a small business concern if it, with its affiliates, employs not more than 500 employees. In connection with subcontracts exceeding \$2,500, any concern shall be considered a small business concern if it qualifies as such under subparagraphs (1) and (2) of this paragraph.

(b) *Dominance in field of operations.* A concern "is not dominant in its field of operations" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration is given to all appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, facilities, sales territory, and nature of business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other or (2) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; *Provided, however,* That restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(d) *Number of employees.* In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or any other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four calendar

RULES AND REGULATIONS

quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

(e) *Small business certificate.* A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 3 and 8(b) (6) of the Small Business Act certifying that the holder of the certificate is a small business concern for the purpose of Government procurement and in accordance with the terms of the certificate.

§ 18-1.701-2 Established supplier.

An "established supplier" of an item is a concern which has supplied the items satisfactorily to one or more NASA installations, or a concern with which mobilization planning is in effect.

§ 18-1.701-3 Potential supplier.

A "potential supplier" of an item is a concern which is a source of supplies, but, which is not an established supplier.

§ 18-1.701-4 Manufacturing industry employment size standards.

The Standard Industrial Classification Manual (1967 Edition) index provides an alphabetical listing of products and the industry with which the product is associated, which includes references to the Classification Code set forth below.

Classification code	Industry	Employment Size standard (number of employees) <sup>1</sup>
<b>Major Group 19—ORDNANCE AND ACCESSORIES</b>		
1925	Guided missiles and space vehicles, completely assembled	1000
1931	Tanks and tank components	1000
1951	Small arms	1000
1961	Small arms ammunition	1000
<b>Major Group 20—FOOD AND KINDRED PRODUCTS</b>		
2011	Meat packing plants	750
2020	Milk, fluid	750
2032	Canned specialties	1000
2043	Cereal preparations	1000
2046	Wet corn milling	750
2052	Biscuit, crackers, and pretzels	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2085	Distilled, rectified, and blended liquors	750
2093	Vegetable oil mills, except cottonseed and soybean	1000
2096	Shortening, table oils, margarine, and other edible fats and oils, not elsewhere classified	750
<b>Major Group 21—TOBACCO MANUFACTURERS</b>		
2111	Cigarettes	1000
<b>Major Group 22—TEXTILE MILL PRODUCTS</b>		
2211	Broad woven fabric mills, cotton	1000
2261	Finishers of broad woven fabrics of cotton	1000
2271	Woven carpets and rugs	750
2295	Artificial leather, oilcloth, and other impregnated and coated fabrics, except rubberized	1000
2299	Tire cord and fabric	1000

Classification code	Industry	Employment Size standard (number of employees) <sup>1</sup>
<b>Major Group 26—PAPER AND ALLIED PRODUCTS</b>		
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
<b>Major Group 28—CHEMICALS AND ALLIED PRODUCTS</b>		
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2815	Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners)	750
2816	Inorganic pigments	1000
2818	Industrial organic chemicals, not elsewhere classified	1000
2819	Industrial inorganic chemicals, not elsewhere classified	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulose man-made fibers	1000
2824	Synthetic organic fibers, except cellulose	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2892	Explosives	750
<b>Major Group 29—PETROLEUM REFINING AND RELATED INDUSTRIES</b>		
2952	Asphalt felts and coatings	750
<b>Major Group 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS</b>		
3011	Aircraft tire and all inner tubes	1000
3021	Rubber footwear	1000
3031	Reclaimed rubber	750
<b>Major Group 32—STONE, CLAY, AND GLASS PRODUCTS</b>		
3211	Flat glass	1000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3291	Vitreous china plumbing fixtures and china and earthenware fittings, and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750
<b>Major Group 33—PRIMARY METAL INDUSTRIES</b>		
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3316	Steel wire drawing and steel nails and spikes	1000
3316	Cold rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3352	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1000
3399	Primary metal industries, not elsewhere classified	750

Classification code	Industry	Employment Size standard (number of employees) <sup>1</sup>
<b>Major Group 34—FABRICATED METAL PRODUCTS, EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT</b>		
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750
<b>Major Group 35—MACHINERY, EXCEPT ELECTRICAL</b>		
3511	Steam engines; steam, gas, and hydraulic turbines; and steam, gas, and hydraulic turbine generator set units	1000
3510	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers, and stackers	750
3562	Ball and roller bearings	750
3571	Computing and accounting machines, including cash registers	1000
3572	Typewriters	1000
3573	Electronic computing equipment	1000
3574	Calculating and accounting machines, except electronic computing equipment	1000
3585	Refrigerators; refrigeration machinery, except household; and complete air conditioning units	750
<b>Major Group 36—ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES</b>		
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1000
3633	Household laundry equipment	1000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records	750
3661	Telephone and telegraph apparatus	1000
3662	Radio and television transmitting, signaling, and detection equipment, and apparatus	750
3671	Radio and television receiving type electron tubes, except cathode ray	1000
3672	Cathode ray picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1000
3694	Electrical equipment for internal combustion engines	750
<b>Major Group 37—TRANSPORTATION EQUIPMENT</b>		
3717	Motor vehicles and parts <sup>2</sup>	1000
3721	Aircraft <sup>3</sup>	1000
3722	Aircraft engines and engine parts <sup>4</sup>	1000
3723	Aircraft propellers and propeller parts	1000
3729	Aircraft parts and auxiliary equipment, not elsewhere classified <sup>5</sup>	1000
3731	Shipbuilding and repairing <sup>6</sup>	1000
3741	Locomotives and parts	1000
3742	Railroad and street cars	750
<b>Major Group 39—MISCELLANEOUS MANUFACTURING INDUSTRIES</b>		
3906	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified	750

<sup>1</sup> The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

<sup>2</sup> Reserved

<sup>3</sup> The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of

these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

<sup>4</sup> Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations:

"Maintenance" means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance."

"Preventive maintenance" means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

<sup>5</sup> Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

<sup>6</sup> Shipbuilding and repairing industry includes establishments primarily engaged in building and repairing all types of ships, barges, canal boats, and lighters, of 5 gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabrication or repairing structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included. The size standard for boatbuilding and repairing (establishments primarily engaged in building and repairing all types of boats, except rubber boats, under 5 gross tons) is 500.

<sup>7</sup> Base Maintenance means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands or the District of Columbia three or more of the following services: Janitorial and custodial services, protective guard services, commissary services, fire prevention services, refuse collection services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air conditioning and refrigeration maintenance. *Provided, however,* That whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50 percent of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such service is classified.

**§ 18-1.702 General policies.**

(a) It is the policy of NASA to place a fair proportion of its total purchases and contracts for supplies and services with small business concerns, and to afford small business concerns an equitable opportunity to compete for contract awards. In the area of research and development contracts, it is NASA policy to award such contracts to those organizations determined by responsible personnel to have a high degree of competence in the specific branch of science or technology required for the successful conduct of the work. It is in the national interest that the number of firms engaged in research and development work for NASA be expanded and that there be an increase in the extent of participation in such work by competent small business firms.

(b) Each NASA installation having procurement authority shall implement this policy by:

(1) Searching continually for and developing information on sources (especially small business concerns) competent to perform research and development. Advance publicity, including use of the Commerce Business Daily (see § 18-1.1003-4) to the fullest extent practicable, shall be given for this purpose. The search should include a review of relevant data or brochures furnished by sources seeking research and development work and a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources by publication of proposed procurements, in addition to the synopsis requirement.

(2) Encouraging contracting officers, technical personnel, and small business specialists to cooperatively seek and develop information on the technical competence of small business concerns for

research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers, and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the installation is interested.

(3) Maintaining bidders lists on a current basis and reviewing them to insure that all small business firms who have made acceptable application to NASA or who appear from other information (including recommendation by the SBA) to be qualified are included therein;

(4) Acquiring descriptive data, brochures, or other information concerning small business firms who appear competent to perform research and development work in fields in which NASA is interested and furnish such information to technical personnel;

(5) To the extent feasible—

(i) Dividing procurements of supplies and services into reasonably small lots of not less than economic production runs in order to permit bidding on quantities less than the total requirements;

(ii) Allowing the maximum amount of time practicable for preparation and submission of bids and proposals; and

(iii) Establishing delivery schedules suitable for small business participation.

(6) Providing to authorized SBA representatives, upon request, information necessary to understand NASA needs concerning research and development programs under consideration for specific future procurement actions. The SBA may provide pertinent information concerning potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by the programs. Full evaluation shall be given to any such information in selecting qualified sources;

(7) Disseminating widely information relating to NASA purchasing methods and practices; and

(8) Freely interchanging ideas and information, including statistical data, with appropriate SBA levels, relating to programs for limiting suitable procurements to small business concerns; and making maximum use of the capacity of small firms in such programs in order to accomplish the purpose of this policy. As to subcontracting, see § 18-1.707.

(c) Records of the total value of all contracts placed with small business concerns during each fiscal year, and reports based thereon, are maintained by NASA through its agencywide procurement reporting system described in § 18-16.901.

**§ 18-1.703 Determination of status as small business concern.**

(a) *General.* Each bidder and offeror shall be required to state in its bid or offer whether or not it is a small business concern. Except as provided in paragraph (b) of this section, the contracting officer shall accept at face value for the particular procurement involved,

a representation by the bidder or offeror that it is a small business concern (see § 18-1.701-1).

(b) *Representation by a bidder or offeror.* Representation by a bidder or offeror that it is a small business concern shall be effective, even though questioned in accordance with the terms of this paragraph (b), unless the SBA, in response to such question and pursuant to the procedures in subparagraph (3) of this paragraph, determines that the bidder or offeror in question is not a small business concern. The controlling point in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of award, except that no bidder or offeror shall be eligible for award as a small business concern unless he has, or unless he could have (in those cases where a representation as to size of business has not been made), in good faith represented himself as small business prior to the opening of bids or closing date for submission of offers (see § 18-2.405 with respect to minor informalities and irregularities in bids).

(1) *Protest of small business status.* Any bidder or offeror may, in connection with a contract involving small business set-aside or otherwise involving small business preferential consideration, question the small business status of any apparently successful bidder or offeror or by sending a written protest to the contracting officer responsible for the particular procurement. The protest shall contain the basis for the protest together with specific detailed evidence supporting the protestant's claim that such bidder or offeror is not a small business. Such protest must be received by the contracting officer prior to the close of business on the fifth working day exclusive of Saturday, Sunday, and Federal Legal Holidays (hereinafter referred to as a working day) after bid opening date or closing date for the receipt of proposals. A protest received after such time shall be considered timely, if in the case of (i) a mailed protest, it is sent by registered or certified mail and the postmark thereon indicates that it would have been delivered within the time limit except for delays beyond the control of the protestant, or (ii) a telegraphic protest, the telegram date and time line indicates that it would have been delivered within the time limit except for delays beyond the control of the protestant. The following procedures shall apply:

(a) *Timely protest received prior to award.* When the contracting officer receives a timely protest prior to award, he shall forward the protest record to the Small Business Administration field office serving the area in which the protested concern is located. The Small Business Administration will promptly notify the contracting officer of the date of its receipt of any such protest and will advise the bidder or offeror in question that his small business status is under review;

(b) *Untimely protests received prior to award.* A protest which is not timely, even though received before award, shall be forwarded to the Small Business Administration field office serving the area

in which the protested concern is located with a notation thereon that the protest is not timely. The protestant shall be notified that his protest cannot be considered on the instant procurement but has been referred to SBA for its consideration in any future actions;

(c) *Action on protests received after award.* A protest received after award of a contract shall be forwarded to the Small Business Administration field office serving the area in which the protested concern is located with a notation thereon that award has been made. The protestant shall be notified that award has been made and that his protest has been forwarded to SBA for its consideration in future actions.

(2) *Questioning of status by contracting officer.* A contracting officer may, any time prior to award, question the small business status of the apparently successful bidder or offeror by sending a written notice to the SBA field office of the region in which the bidder or offeror has his principal place of business. Such notice shall contain a statement of the basis for the question, together with available supporting facts. SBA will advise the bidder or offeror in question that his small business status is under review.

(3) *Determination by SBA regional director.* The SBA Regional Director will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of his determination, and award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with paragraph (4) of this section and the contracting officer is notified of the appeal prior to award. If an award was made prior to the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid. Action to be taken on SBA determinations shall be as follows:

(i) If the SBA Regional Director's determination is not received by the contracting officer 10 working days after SBA's initial receipt of a protest or notice questioning the Small Business status of a bidder or offeror, it shall be presumed that the questioned bidder or offeror is a small business concern. This presumption will not be used as a basis for making an award to the questioned bidder or offeror without first ascertaining when a size determination can be expected from SBA, and where practicable, waiting for such determination, unless further delay in award would be disadvantageous to the Government.

(ii) If an appeal from the SBA Regional Director's determination is made, pursuant to paragraph (a) (4) of this section, to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, and the contracting officer is notified prior to award, an additional 20 working days (i.e., 30 working days inclusive from the time of initial receipt of the case in the SBA field office) shall be allowed for receipt of the SBA size determination.

(iii) If the determination of the Chairman, Size Appeals Board, Small Business Administration, on the appeal

is not received by the contracting officer within the 30 working day period, it shall be presumed that the SBA Regional Director's size determination has been sustained.

(iv) Until receipt of the SBA determination of the size status, or expiration of the 10-day period (30 days in case of an appeal to the Chairman, Size Appeals Board), whichever occurs first, procurement action shall be suspended; however, this suspension shall not apply to any urgent procurement action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(4) *Appeal from size determination.* An appeal from a size determination made by an SBA Regional Director may be taken before the close of business on the fifth working day after the receipt of such decision. Unless such written notice of appeal is received by the SBA Size Appeals Board, Washington, D.C., within this time and the contracting officer has been notified of such appeal prior to award, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(c) *Product classification—(1) Determination by contracting officer.* The contracting officer shall determine the appropriate classification of a product establishing the small business definition to be used in a specific procurement. This classification and the applicable size standard, pursuant to § 18-1.701, shall be set forth in the schedule of the solicitation. The contracting officer's determination shall be final unless appealed in accordance with subparagraph (2) of this paragraph (c).

(2) *Appeal from classification.* An appeal from a product classification determination by a contracting officer must be taken:

(i) Not less than 10 working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations; or

(ii) Not less than 5 working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations.

Such appeals shall be directed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Action of size appeals board.* The Size Appeals Board will promptly notify the contracting officer of the receipt of a valid appeal and, if possible, will inform the contracting officer prior to the date set for opening of the solicitation of its ruling on the appeal. The SBA decision, if received prior to the opening date, shall be considered final, and solicitations will be modified to reflect such decision, if necessary. Where appropriate, opening dates may be extended. SBA rulings received after the opening

date shall not apply to the current procurement but shall apply in future procurements of the product.

#### § 18-1.704 Small business officials.

##### § 18-1.704-1 NASA Headquarters.

The Director of Procurement is responsible for the general supervision and coordination of the NASA Small Business Program. Within the Procurement Office, the Small Business Advisor is responsible for developing the NASA small business program, advising the Director of Procurement and other NASA officials on small business problems, and representing NASA before other Government agencies on matters primarily affecting small business.

##### § 18-1.704-2 Installations.

The head of each installation having procurement responsibilities shall designate a qualified individual in the procurement office as a "small business specialist" to provide a central point of contact to which small business concerns may direct inquiries concerning participation in the NASA procurement program and small business matters. The small business specialist shall also perform such other functions as he is specifically directed to perform by this subpart or which the Procurement Officer may prescribe for the purpose of implementing the small business program, including the assignment of responsibility for the Labor Surplus Area Program described in Subpart 18-1.8 of this chapter. When the head of an installation considers that the volume of procurement or the functions relating to procurement at the installation does not warrant a full-time small business specialist, he may assign such duties to procurement personnel on a part-time basis.

##### § 18-1.704-3 Small business specialists.

The small business specialist appointed pursuant to § 18-1.704-2 of this subpart shall perform the following duties, as determined appropriate to the installation by the Procurement Officer:

(a) He shall maintain a program designed to locate capable small business sources for current and future procurements, through SBA or other methods.

(b) He shall coordinate inquiries and requests for advice from small business concerns on procurement matters.

(c) Prior to issuance of solicitations or contract modification for additional supplies or services in excess of \$2,500, he shall determine that small business concerns will receive adequate consideration including initiation of set-asides (§ 18-1.706). This determination may be made jointly with the contracting officer or may be in the form of a recommendation to him. Disagreements between the small business specialist and the contracting officer on proposed set-aside action shall be resolved by the Procurement Officer whose decision shall be final except in those cases where an SBA representative intervenes as an interested party. (See § 18-1.706-3 as to resolution of disagreements with SBA recommendations on set-asides.)

(d) He shall review procurement programs for possible breakout of items suitable for procurement from small business concerns.

(e) He shall advise small business concerns with respect to the financial assistance available under existing law and regulations and assist such concerns in applying for financial assistance. He shall also assure that requests by small business concerns for proper assistance are not treated as a handicap in securing the award of contracts.

(f) He shall participate in determinations concerning responsibility of a prospective contractor (see § 18-1.904) whenever small business concerns are involved.

(g) He shall participate in the evaluation of a prime contractor's small business subcontracting program (see § 18-1.707-4).

(h) He shall assure that participation of small business concerns is accurately reported.

(i) He shall make available to SBA copies of solicitations when so requested.

(j) He shall act as liaison between the contracting officer and SBA field offices and representatives in connection with set-asides, certificates of competency and any other matters in which the Small Business Program may be involved. Procurements in which certificates of competency are requested, shall be reported to the Director of Procurement, NASA Headquarters. The report should contain a description of the requirement, a list of the bidders or proposers, and the contract prices specified in the bids or proposals as submitted and the reason for the proposed rejection of an otherwise acceptable small business bid or proposal. Pertinent dates such as the required date for the completion of the procurement, the date of the request for the certificate of competency, etc., should also be furnished.

(k) He shall, in cooperation with the contracting officer and technical personnel, seek and develop information on the technical competence of small business concerns for research and development contracts. He shall regularly bring to the attention of the contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research and development work in fields in which NASA is interested.

(l) When a small business firm's bid has been rejected for nonresponsiveness or nonresponsibility, the small business specialist, upon request, shall aid, counsel and assist that small business firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards.

**§ 18-1.705 Cooperation with the Small Business Administration.**

**§ 18-1.705-1 General.**

All NASA procurement offices are responsible for consulting and cooperating with the SBA in carrying out the purposes of the Small Business Act.

**§ 18-1.705-2 SBA representatives.**

(a) SBA may assign representatives to any procurement office on a full or part-time basis to carry out SBA policies and programs. In accordance with the procedures of the installation concerned, SBA shall obtain security clearances for each of its representatives. SBA representatives and employees shall comply with NASA directives concerning the conduct of procurement personnel. The duties of the assigned SBA representatives include review of proposed procurements to recommend to the procurement office (1) set-asides on selected procurements not unilaterally set-aside by the small business specialist and the contracting officer, (2) new qualified potential small business sources, and (3) breakout of components for competitive procurement.

(b) The procurement office shall include in the appropriate bidders list or in any group of firms to be solicited in specific procurements, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

**§ 18-1.705-3 Access to procurement information.**

Upon request, and subject to applicable security regulations, the small business specialist shall provide SBA representatives access to available or reasonably obtainable information, including technical data (including drawings and specifications), procurement history, and bidders lists, and to procurement planning information. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

**§ 18-1.705-4 Certificates of competency.**

(a) SBA has statutory authority to certify the competency of any small business concern as to capacity and credit. "Capacity" means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, "knowhow," technical equipment, and facilities or the ability to obtain them. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's capacity and credit (see § 18-1.903-1), unless the contracting officer has substantial doubt as to the concern's ability to perform, in which case the procedures in paragraphs (f) and (g) of this section apply.

(b) In procurement where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated procurement of research and development, highly complex equipment, or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and,

prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure is applicable.

(c) If a bid or proposal of a small business concern is to be rejected solely because the contracting officer has determined the concern to be nonresponsible as to capacity or credit, the matter shall be referred to the appropriate SBA field office having the authority to process the referral in the geographical area involved. If required, guidance as to the location of the appropriate SBA field office may be obtained from an SBA representative assigned to the procurement office or the nearest SBA field office. This procedure applies only to proposed awards exceeding \$2,500. For proposed awards exceeding \$2,500, but not exceeding \$10,000, its use is within the discretion of the contracting officer. A pre-award survey (see § 18-1.905) shall be made prior to a determination by a contracting officer that a small business concern is not responsible because of a lack of capacity or credit on a proposed award of more than \$10,000. Concurrent referrals of two or more bids or proposals, rejected because of lack of capacity or credit for a proposed award, shall not be made to SBA by the contracting officer. Final processing of a case, including possible issuance of certificate of competency, must be completed by SBA on each referral before the contracting officer may proceed with an additional referral on the proposed award to SBA. If a partial set-aside is involved and the bid of a small business concern on the unreserved portion is to be rejected for lack of capacity or credit and the same small business concern is entitled to consideration on the reserved portion of the set-aside if a certificate of competency is issued by the SBA, the entire quantity of the procurement (reserved and unreserved) for which that small business concern may be entitled, if competent, shall be referred to SBA and the referral papers so noted. The SBA may then certify the small business concern for the maximum quantity of the procurement for which it is eligible. The award shall be withheld until SBA action concerning issuance of a certificate of competency, or until 15 working days after the SBA is so notified, whichever is earlier subject to the following:

(1) Under no circumstances will a referral be made to the SBA prior to a determination by the contracting officer that the bid or proposal of the small business concern is responsive.

(2) The activity performing the pre-award survey shall furnish such survey to the contracting officer. If the contracting officer determines, in accordance with § 18-1.904, that the small business concern is not responsible solely by reason of a lack of capacity or credit, he will refer the matter direct to the SBA, or he may notify the preaward survey activity to refer the matter to the SBA, whichever is the more expeditious (e.g., where the surveying activity is substantially closer to the cognizant SBA office than the procurement office, it may be

more expeditious to have the surveying activity refer the matter to the Small Business Administration). A copy of the communication referring the matter to SBA shall be forwarded to the Director of Procurement, NASA Headquarters.

(3) Upon making a determination to refer the matter to the SBA, the contracting officer shall furnish to the SBA, or to the surveying activity, whichever is consistent with the action taken under paragraph (c) (2) of this section the data prescribed in paragraph (d) of this section. The procurement office that refers the matter to the SBA shall maintain close liaison with the SBA to assure compliance with paragraph (e) of this section. If the procurement office does not hear from the cognizant SBA field office within 5 working days after the matter has been referred, the procurement office will contact the SBA Office to which the matter was referred to determine whether a certificate of competency is being processed. When, in accordance with paragraph (c) (2) of this section, the contracting officer has requested the preaward survey activity to refer the matter to SBA, that activity shall keep the contracting officer advised of significant developments, including the results of any inquiry to the SBA at the end of the 5 working day period, and any new or additional facts, learned from the SBA, that warrant reversal of the preaward survey activity's negative finding. The Director of Procurement shall be promptly informed in writing of all cases where (i) the small business concern elects not to file an application for a certificate of competency, or (ii) SBA declines to issue a certificate of competency, or (iii) the procurement office reverses the preaward survey negative finding concerning capacity or credit.

(4) A referral need not be made to the SBA if the contracting officer certifies in writing that the award must be made without delay, includes such certificate and supporting documentation in the contract file, and promptly furnishes a copy to the SBA.

(5) A referral need not be made to the SBA if a contracting officer determines a small business concern nonresponsible pursuant to §18-1.903-1(d) and such determination is approved by the head of the installation or his designee.

(6) A determination by a contracting officer that a small business concern is not responsible for reasons other than deficiencies in capacity or credit (e.g., lack of integrity, business ethics, or persistent failure to apply necessary tenacity or perseverance to do an acceptable job—not whether the concern can perform, but whether the concern will perform) must be supported by substantial evidence documented in the contract files. These factors of responsibility are not covered by the certificate of competency procedure, but are for determination by the contracting officer, and approval by the head of the installation or his designee. Concurrent with the contracting officer's submission of such determination of nonresponsibility to the head of the installation or his designee for approval, the contracting officer shall transmit a

copy of the documentation supporting the determination that a small business concern is not responsible for reasons other than deficiencies in capacity or credit to the assigned SBA representative or to the nearest SBA Regional Office. The documentation transmitted to the SBA shall include: Two copies of the solicitation, and one copy of the preaward survey findings, pertinent technical and financial information, the abstract of bids, if available, and other pertinent information which supported the contracting officer's determination of nonresponsibility for reasons other than capacity and credit. The SBA office receiving the documentation shall, within 5 working days, notify the contracting officer in writing of the SBA's intent to appeal to the head of the installation or his designee with information and recommendations which would materially bear on any approval action being considered by the head of the installation or his designee. Within 10 days of the SBA's written notification to the contracting officer, the SBA shall present to the head of the installation or his designee the appeal in writing. Such appeal shall contain the basis for the SBA position, and include statements from the small business concern as to tenacity, integrity and perseverance and how deficiencies noted in the contracting officer's determination have been or will be eliminated. After consideration of the appeal, the decision by the head of the installation or his designee shall be final. If the contracting officer does not receive notification within 5 working days specified above that the SBA intends to appeal, it shall be deemed that the SBA does not intend to file such an appeal. The procedures of §18-1.705-4(c) (4) apply if the award must be made without delay.

(d) It is the policy of NASA to endeavor to reach agreement with the SBA regarding the lack of capacity or credit of a small business concern. To assist the SBA and to assure that it has the benefit of the views of the NASA, the SBA shall be furnished three copies of the solicitation, one copy of the pertinent drawings and specifications, the preaward survey findings, pertinent technical and financial information, and, if available, the abstract of bids.

(e) SBA field offices will notify the contracting officer of each case where they (1) plan to issue a certificate of competency, or (2) are submitting a case to SBA, Washington, D.C., for approval prior to issuance of a certificate of competency, and to provide the contracting officer or his designated representative with a brief written statement citing the reasons for SBA's proposed affirmative action. Prior to final SBA action, the contracting officer will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be made available, upon request, to the contracting officer, or his representative, at such meeting or through correspondence. SBA case files may be

examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a procurement office, who participated in a preaward survey of the prospective contractor shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the NASA through a complete exchange of preaward information developed by each agency.

(f) One of the following courses of action shall be taken subsequent to discussions or a meeting between representatives of the contracting officer and SBA field offices:

(1) If the new and additional facts presented by the SBA field office representatives so warrant, the negative determination as to capacity and credit of the apparent low bidder or offeror shall be reversed, the referral to SBA shall be withdrawn, and the contract award shall be made without the necessity for issuance of a certificate of competency by SBA. The contracting officer shall promptly inform the SBA field office of his intention to take such action and the anticipated date of contract award.

(2) If agreement cannot be reached between the SBA field office and the contracting officer and substantial doubt still exists as to the ability of the contractor to perform, the contracting officer shall request the SBA field office to suspend action to permit referral of the case to the Director of Procurement for review and possible appeal to SBA, Washington, D.C. The contracting officer shall forward through channels on an expedited basis a complete case file to the Director of Procurement with a reply that the case be considered for appeal to SBA, Washington, D.C. This file will include the data specified in paragraph (d) of this section, SBA's rationale for proposing affirmative certificate of competency action, and the contracting officer's comments thereon. Procurement action shall be suspended until the contracting officer is informed by the Director of Procurement of the final decision in the case. If the Director of Procurement concludes that the request for certificate of competency action should be withdrawn and a contract awarded without benefit of a certificate of competency, the contracting officer will be so informed and provided written instructions on how to proceed with the procurement. If the Director of Procurement agrees with the recommended appeal action of the contracting officer, he will request in writing the SBA Associate Administrator for Procurement and Management Assistance, Washington, D.C., to review the proposed affirmative certificate of competency action of the SBA field office. If SBA, Washington, D.C., does not concur with the proposed affirmative certificate of competency action of its field office, it shall so inform the Director of Procurement. If SBA, Washington, D.C., concurs with the affirmative certificate of competency action proposed by the SBA field office, it

shall so inform the Director of Procurement, giving reasons for its position. The Director of Procurement may then request a meeting with SBA, Washington, D.C., to present an appeal on the proposed certificate of competency action. Following an appeal, the determination made by the SBA Associate Administrator relative to certificate of competency action shall be considered final and not subject to further appeal by NASA.

(3) If agreement cannot be reached between the contracting officer and the SBA field office, the contracting officer may conclude it would not be practicable to appeal the case to the Washington SBA level nor would it be appropriate to withdraw his request for certificate of competency action. In that case, the contracting officer shall inform the SBA field office that it must issue a certificate of competency as a prerequisite to contract award. However, such action shall not be taken by the contracting officer without prior approval from the Director of Procurement.

(g) If an SBA field office fails to give a contracting officer the opportunity to refer a proposed affirmative certificate of competency action to the Director of Procurement for review and possible appeal, appeal action described in paragraph (f) of this section, may be taken by the contracting officer subsequent to the issuance of a certificate of competency if he has substantial doubt as to the ability of the contractor to perform.

**§ 18-1.705-5 Performance of contract by Small Business Administration.**

In accordance with section 8a of the Small Business Act (15 U.S.C. 637(a)), in any case in which the Administrator, SBA, certifies to the Administrator, NASA, that the SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to the SBA upon such terms and conditions, consistent with these regulations, as may be agreed upon between the SBA and the contracting officer.

**§ 18-1.706 Set-asides for small business.**

**§ 18-1.706-1 General.**

(a) Subject to any applicable preference for labor surplus area set-asides (see § 18-1.803(a)(2)) and the following criteria, any individual procurement or class of procurements or an appropriate part thereof, shall be set-aside for the exclusive participation of small business concerns when such action is determined to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or assuring that a fair proportion of Government procurement is placed with small business concerns. The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer normally upon initiation by the small business specialist. If a small business specialist is not assigned or is otherwise not available, the set-aside may be initiated by the contracting officer. A joint determination is one which is made jointly by an SBA repre-

sentative and the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed procurements over \$2,500 which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(b) To provide for SBA consideration of individual set-asides, at the request of its representative, the procurement office shall make available to him for review at such office (to the extent that he has been granted security clearance) all proposed classified and unclassified procurements expected to exceed \$2,500 on which unilateral set-asides have not been made by the contracting officer.

(c) In addition to individual procurement set-asides, classes of current and future procurements, or portions thereof, of selected items or services, or groups of like items or services may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides will normally be initiated by recommendation of the small business specialist, but may also be initiated by the contracting officer. Joint class set-asides may be recommended by SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current procurement if future procurements can be clearly foreseen. Class set-asides shall apply only to the procurement office making or participating in the agreement, and shall not apply to an individual procurement for which small purchase procedures are to be used. A class set-aside agreement should specifically identify the items or services subject thereto, and provide for annual joint review by the small business specialist (if unilateral) or the SBA representative (if joint) and the contracting officer, to determine whether it should be withdrawn (see § 18-1.706-3). Any class of procurements proposed to be totally set-aside shall satisfy the requirements of § 18-1.706-5. The set-aside determination for any class of procurements proposed to be partially set-aside shall specify that it does not apply to any individual procurement not severable into two or more economic production runs or reasonable lots. Records of individual procurements under each class set-aside shall be maintained by individual procurement offices and shall include the solicitation number and date, item or service, unilateral or joint class set-asides, estimated dollar amount of the procurement, and estimated dollar amount of the set-aside. A copy of each such record shall be made available by each procurement office to the small business specialist or to SBA upon request.

(d) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item has been placed with small business concerns;

(2) A period of less than 30 days from date of issuance of solicitations is prescribed for the submission of the bids or proposals;

(3) The procurement is classified;

(4) Small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

(5) A class set-aside of the item or service concerned has been made at some other procurement office; or

(6) The item will be described by "brand name or equal."

**§ 18-1.706-2 Contract authority.**

Contracts for total or partial set-asides entered into by conventional negotiation (see § 18-1.706-5(b) and § 18-1.706-6(d)) or by "Small Business Restricted Advertising" (see § 18-1.706-5(b)) are negotiated procurements and shall cite as authority 10 U.S.C. 2304(a) (1) in the case of a unilateral determination, or 10 U.S.C. 2304(a) (17) and section 15 of the Small Business Act in the case of a joint determination (see § 18-3.201-2(b)(2)).

**§ 18-1.706-3 Review, withdrawal, or modification of set-asides or set-aside proposals.**

(a) Prior to issuing solicitations each individual procurement governed by a class set-aside shall be carefully reviewed to insure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist or the SBA representative, as appropriate, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual procurements.

(b) Upon a recommendation of the small business specialist that an individual procurement or class of procurements, or portion thereof, be set-aside, the contracting officer shall promptly either:

- (1) Concur in the recommendation, or
- (2) Disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the small business specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. The SBA representative

will either concur with the decision of the contracting officer or appeal the case to the head of the installation or to higher authority in accordance with the provisions of paragraph (d) of this section. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of paragraph (f) of this section.

(d) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual procurement or class of procurements or portion thereof and so notifies the SBA representative in writing, or if the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint set-aside determination, the SBA representative shall be allowed 2 working days to appeal in writing to the head of the installation or his designee for decision. Within 1 working day after receipt of a decision from the head of the installation or his designee approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend procurement action pending a further appeal by the Administrator of the SBA to the Administrator of NASA. The SBA shall be allowed 7 working days after making such written request within which (1) the Administrator of SBA may appeal to the Administrator of NASA, and (2) notify the contracting officer whether the further appeal has in fact been taken. If notification is not received by the contracting officer within the 7-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that an appeal to the Administrator of NASA was not taken. Where an appeal to the Administrator of NASA has been taken and the contracting officer has been notified of that fact within the 7-day period, the head of the installation shall forward the matter to the Administrator of NASA, through the Procurement Office, NASA Headquarters, with full justification for his decision.

(e) Any procurement action which has been appealed by the SBA representative shall be suspended pending the decision of the Procurement Officer or his designee. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with paragraph (d) of this section, the suspension shall continue until (1) the SBA appeal is deemed to have been withdrawn (as provided in paragraph (d) of this section) or (2) the matter is determined by the Administrator of NASA. However, this procedure shall not apply to any particular procurement action which the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement or justification. The contracting officer shall

promptly give written notice to the SBA representative of any such procurement action initiated.

(f) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual procurement or class of procurements or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the Procurement Officer for decision. A memorandum of the decision by the Procurement Officer shall be placed in the contract file. After receipt of a decision from the Procurement Officer, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the Director of Procurement (Code KD-4). Documentation of the case transmitted to the Director of Procurement shall include, as a minimum, a copy of the IFB or RFP, a list of those solicited, indicating if the invitee is small or large business by SBA definition, copies of the reasons, in writing, for or against set-aside or withdrawal or modification of a set-aside submitted by the small business specialist and the contracting officer, a copy of the Procurement Officer's decision and a complete abstract of all bids or proposals received indicating the successful bidder together with any other material considered by the Procurement Officer in arriving at his decision. The small business specialist's transmittal letter or memorandum will contain an affirmative statement that the enclosures constitute the complete file reviewed and considered by the Procurement Officer in making his decision.

(g) A signed memorandum of non-concurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

#### § 18-1.706-4 Reporting for Department of Commerce procurement synopsis.

See § 18-1.1003-8.

#### § 18-1.706-5 Total set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides the entire amount of an individual procurement or class of procurements (including but not limited to contracts for maintenance, repair, and construction) shall be set aside for exclusive small business participation (see § 18-1.706-1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, see § 18-1.706-6 as to partial set-asides. While the past procurement history of the item or similar items is important, it

is not the only controlling factor which should be considered in determining whether a reasonable expectation exists.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used whenever possible. Invitations for bids shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 18-2 of this chapter, except that bids and awards shall be restricted to small business concerns. Bids received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(c) In procurements involving total set-asides for small business, each invitation for bids or request for proposals shall contain substantially the following notice. The applicable size standards shall be set forth in the schedule.

#### NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (MAY 1965)

(a) *Restriction.* Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) *Definition.* A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract and items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

#### § 18-1.706-6 Partial set-asides.

(a) Subject to any applicable preference for labor surplus area set-asides as provided in § 18-1.803(a)(2), a portion of a procurement, not including construction, shall be set aside for exclusive small business participation (see § 18-1.706-1) where:

(1) The procurement is not appropriate for total set-aside pursuant to § 18-1.706-5;

(2) The procurement is severable into two or more economic production runs or reasonable lots (see § 18-1.804-1(a)); and

(3) One or more small business concerns are expected to have the technical

competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with technical competency and productive capacity will respond with bids or proposals; when the contracting officer is uncertain whether the latter situation exists, he may make advance written inquiries to all known sources to determine the number of interested concerns.

Similarly, a class of procurements, not including construction, may be partially set-aside in accordance with § 18-1.706-1 (c).

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) (1) In advertised procurements involving partial set-asides for small business, each invitation for bids shall contain substantially the following notice. The applicable size standards shall be set forth in the schedule. In negotiated procurements the notice shall be appropriately modified for use with request for proposals.

**NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JULY 1970)**

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 130 percent of the highest unit price at which an award is made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also certified-eligible concerns.

Group 2. Small business concerns which are also persistent labor surplus area concerns.

Group 3. Small business concerns which are also substantial labor surplus area concerns.

Group 4. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portion, except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be

accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotiation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity to be offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the same price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each such bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside a quantity of the set-aside portion equal to the quantity of the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(b) *Definitions.* (1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns:

*Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(2) A "labor surplus area" is a geographical area which is:

(i) An appropriate section of a city, State or an Indian Reservation classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment" (cities and States with classified sections of unemployment or underemployment, as well as eligible Indian Reservations are listed by the Department of Labor in its publication "Area Trends in Employment and Unemployment."); or

(ii) Classified by the Department of Labor as an "Area of Substantial Unemployment"

(herein referred to as an area of substantial labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(iii) Classified by the Department of Labor as "Area of Persistent Unemployment" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment"; or

(iv) Not classified as in (ii) or (iii) above, but which is individually certified as an area of persistent or substantial unemployment by the Department of Labor at the request of a prospective contractor.

(3) Labor surplus area concern includes certified-eligible concerns, persistent labor surplus area concerns, and substantial labor surplus area concerns, as defined below:

(i) "Certified-eligible concern" means a concern (A) located in or near a section of concentrated unemployment or underemployment which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections, and (B) which will agree to perform, or cause to be performed by a certified concern, a substantial proportion of a contract in or near such sections; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns in or near such sections. A concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(ii) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that will be incurred by the prime or first-tier subcontractors on account of manufacturing or production performed in such areas and in or near a section of concentrated unemployment or underemployment by a certified eligible prime or first-tier certified subcontractors amount to more than 50 percent of the contract price.

(iii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that will be incurred by the prime or first-tier subcontractors on account of manufacturing or production performed in substantial and persistent surplus areas and in or near a section of concentrated unemployment or underemployment by himself if certified, or by first-tier certified subcontractors amount to more than 50 percent of the contract price.

(4) "Unit price" shall include evaluation factors added for the rent-free use of Government property.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting

Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that: (i) if awarded a contract as a certified-eligible small business concern under the set-aside portion of this procurement he will perform or cause to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment and, in the performance of such contract or subcontracts, will employ a proportionate number of disadvantaged persons residing within sections of concentrated unemployment or underemployment in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas or in or near sections of concentrated unemployment or underemployment by himself if certified-eligible prime or first tier certified subcontractors; and (iii) if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas or in or near sections of concentrated unemployment or underemployment by himself if certified or by first tier certified subcontractors.

(e) *Eligibility Based on Certification.* Where eligibility for preference is based upon the status of the bidder as a "certified-eligible concern," the bidder shall furnish with his bid evidence of its certification or its first tier subcontractors' certification by the Secretary of Labor.

(2) In requirements contracts involving a partial small business set-aside add the following to the above clause.

(f) *Requirements Contract.* Only one award will be made for each item or subitem of the non-set-aside portion and only one award will be made for each item or subitem of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside contractor to whom the awards are made.

(d) (1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 130 percent of the highest award made or to be made on the non-set-aside portion (taking into account the evaluation factors for rent-free use of Government property pursuant to Part 18-13) and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted with small business concerns in the order of priority as indicated in

the foregoing notices: *Provided, That,* where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of § 18-2.407-6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion will be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion. A bidder or offeror entitled to receive an award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the set-aside. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see § 18-1.312), or the change of prices after award by negotiation of a contract modification.

(2) When the award price for the non-set-aside portion has been determined and where an award will be made to a small business concern and the same small business concern is entitled to receive the set-aside portion of a solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only.

**§ 18-1.706-7 Automatic dissolution of set-asides.**

If the entire set-aside portion is not procured by the method set forth in § 18-1.706-5, as to total set-asides, or in § 18-1.706-6, as to partial set-asides, the determination referred to in § 18-1.706-1 is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

**§ 18-1.706-50 Small business class set-aside for construction, repair, and alteration work.**

A class set-aside for small business is considered to have been made for each proposed procurement for construction, repair and alteration work in an estimated amount ranging from \$2,500 to \$500,000. Accordingly, the contracting officer shall set-aside for small business each such proposed procurement. If, in his judgment, the particular procurement falling within the dollar limits specified above is unsuitable for a set-aside for exclusive small business participation, the procedure set forth in § 18-1.706-3 shall apply. Proposed procurements for construction, repair, and alteration work in an estimated amount of more than \$500,000 shall be processed on a case-by-case basis pursuant to § 18-1.706-1(a).

**§ 18-1.706-51 Maintenance of records.**

Records pertaining to the initiation of individual procurements under each class set-aside shall be maintained by small business specialists at each procurement office. Such records shall include:

- (a) Invitation for bids or request for proposals number and date;
- (b) Item or service;
- (c) Unilateral or joint class set-aside and number;
- (d) Estimated amount of procurement; and
- (e) Estimated amount of set-aside.

A copy of each such record shall be made available by each procurement office to SBA upon request.

**§ 18-1.707 Subcontracting with small business concerns.**

**§ 18-1.707-1 General.**

(a) It is the policy of the Government to enable small business concerns to be considered fairly as subcontractors to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, and to assure that prime contractors and subcontractors having small business subcontracting programs will consult through the procurement office with the SBA at its request.

(b) To more effectively carry out the Government's policy objectives stated in paragraph (a) of this section, prime contractors and subcontractors having small business subcontracting programs must be informed of (1) the Government's evaluation of their efforts in carrying out an effective small business subcontracting program, (2) any specific noted deficiencies in their Small Business Subcontracting Programs, and (3) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve his program, he should be advised in general terms as to the type of actions that will result in a reward, penalty, or no impact on profit or fee. Any evaluation and remarks to the contractor, including areas of suggested improvement and areas where the contractor has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

(c) The SBA is not authorized, however, to prescribe the extent to which any contractor or subcontractor shall subcontract or specify the concerns to which subcontracts shall be granted, nor is authority vested in the SBA respecting the administration of individual prime contracts or subcontracts.

**§ 18-1.707-2 Small business subcontracting program.**

The Government's small business subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with small business concerns. In contracts which range from \$5,000 to \$500,000, the contractor undertakes the obligation of accomplishing the maximum amount of small business subcontracting which is consistent with the

efficient performance of the contract. This undertaking is set forth in the contract clause prescribed in § 18-1.707-3 (a). In contracts which may exceed \$500,000, the contractor is required, pursuant to the clause set forth in § 18-1.707-3(b), to undertake a number of specific responsibilities designed to ensure that small business concerns are considered fairly in the subcontracting role and to impose similar responsibilities on major subcontractors. (The liaison officer required by the latter clause also may serve as liaison officer for labor surplus area matters.)

§ 18-1.707-3 Required clauses.

(a) The "Utilization of Small Business Concerns" clause set forth below shall be included in all contracts in amounts which may exceed \$5,000 except contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS (JULY 1962)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

(b) The "Small Business Subcontracting Program" clause below shall be included in all contracts (except maintenance, repair and construction contracts) which may exceed \$500,000, which contain the clause required by paragraph (a) of this section and which, in the opinion of the contracting officer, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed \$500,000 but which, in the opinion of the contracting officer, offer substantial subcontracting possibilities, shall be urged to accept the clause.

SMALL BUSINESS SUBCONTRACTING PROGRAM (MARCH 1970)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."

(2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.

(3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this clause, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

(A) Whether the award went to large or small business.

(B) Whether less than three or more than two small business concerns were solicited.

(C) The reason for noncollection of small business if such was the case.

(D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the individual Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review.

(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give the Small Business Administration timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

(6) Include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities.

(7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

(8) Submit NASA Form 524 reports to the Procurement Office, NASA Headquarters, Washington, D.C. 20546, in accordance with the instructions contained therein. The reporting requirements of this subparagraph (8) do not apply to small business contractors or subcontractors.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1.701 of the NASA Procurement Regulation.

(c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.

(d) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of \$500,000 and which contains the "Utilization of Small Business Concerns" clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors; except that the subcontractor will submit the NASA Form 524 reports, to NASA Headquarters, Washington, D.C. 20546, in accordance with the instructions contained therein.

(c) The "Small Business Subcontracting Program (Maintenance, Repair and Construction)" clause below shall be included in all contracts for maintenance, repair and construction work which may exceed \$500,000, which contain the clause required in paragraph (a) of this section and which in the opinion of the contracting officer, offer substantial subcontracting possibilities.

SMALL BUSINESS SUBCONTRACTING PROGRAM (MAINTENANCE, REPAIR AND CONSTRUCTION) (MAY 1965)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's Small Business Subcontracting Program.

(b) Prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a completed NASA Form 524 to the Government addresses prescribed thereon. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding \$500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit NASA Form 524 direct to the Government addresses prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on NASA Form 524.

§ 18-1.707-4 Responsibility for reviewing the subcontracting program.

(a) To ensure compliance with the provisions of the clauses set forth in § 18-1.707-3, the small business specialist at the NASA installation administering the contract is responsible for assisting the contracting officer in reviewing and determining the adequacy of a contractor's small business subcontracting program. Where the preponderance of contracts in a contractor's plant is with the Department of Defense or administration of the contract has been transferred to an agency of the Department of Defense, the reviews conducted by the cognizant Military Department will be used. In those cases where NASA conducts the review, reports of findings shall be forwarded to the Small Business Advisor, NASA Headquarters, and any deficiencies in the contractor's small business subcontracting program will be brought to the attention of the contractor's designated small business liaison officer with a request for appropriate corrective action.

(b) In those instances in which subcontractors are required to establish such a program in accordance with the clause in § 18-1.707-3(b), reviews of the subcontractor's program shall be made in the same manner as the review of the prime contractor's program.

(c) The following factors shall be considered in the periodic review to determine the adequacy of the contractor's (including subcontractor's) Small Business Subcontracting Program:

(1) The extent to which the contractor pursues an energetic program to locate additional small subcontract sources, including utilization of the services of the Small Business Administration, and appropriate media such as the Commerce Business Daily;

(2) The contractor's efforts to place with small business concerns developmental type work likely to result in later production opportunities;

(3) The contractor's policy and practices in providing financial, engineering, technical, or managerial assistance to small subcontractors;

(4) The contractor's efforts to break out components of large systems in order to promote broader competition and greater opportunities for potential small subcontractors;

(5) The extent to which top management supports the program by issuing oral and written policy statements and holding periodic training and discussion meetings for personnel;

(6) The extent of contractor participation in procurement conferences, vendor open-house days, and similar meetings designed to provide an "open door" to small companies seeking subcontract work;

(7) The adequacy of justification in procurement files for decisions not to solicit small business on individual procurements;

(8) The extent to which the contractor considers small business interests in make-or-buy decisions;

(9) The extent to which the contractor has taken corrective action to remedy deficiencies in his program which were previously called to his attention;

(10) The accuracy of the contractor's records of size status of subcontractors;

(11) Other unusual efforts to promote the program which exceed contractual requirements.

A written report of each review shall be prepared indicating the extent of compliance with all contractual provisions pertaining to the assistance of small business. The specific areas of deficiency or superior performance of the contractor, as appropriate, shall be documented. A summary of the findings and recommendations shall normally be sent to the contractor's corporate office or to the plant if a plant review was involved. Any deficiencies in the contractor's program shall be brought to the attention of the contractor's designated liaison officer with a request for corrective action. In addition to the distribution outlined above, written reports of reviews shall be maintained in the cognizant procurement office. These reports shall be made available to SBA, small business specialists, contracting officers, and to other procuring agencies upon request.

**§ 18-1.707-5 Reports on NASA Form 524.**

In accordance with § 18-1.707-3, all business concerns which participate in the Small Business Subcontracting Program shall furnish the information prescribed on NASA Form 524 in accordance with the instructions provided on the form. The reports shall be submitted

directly to the Procurement Office, NASA Headquarters, Washington, D.C., 20546. Contracting officer shall furnish contractors supplies of NASA Form 524.

**§ 18-1.707-6 Subcontracting studies and surveys.**

Each procurement office shall assist the SBA to obtain such reasonably obtainable information and records concerning the subcontracting of its prime contractors and its subcontractors having contracts that contain the "Small Business Subcontracting Program" clause, as the SBA may deem necessary. Accordingly, the contracting officer or his representative, separately, or together with a representative of the SBA, may periodically conduct studies and surveys of the contractor's subcontracting procedures and practices and those of his subcontractors. Such studies and surveys may originate with the procurement office in order to have available the pertinent data concerning subcontracting by its primes, or, if such data is not currently available, the studies and surveys may originate upon the request of the SBA for such data. On the basis of the foregoing studies, surveys, and records, the SBA may make recommendations to the procurement office regarding methods for increasing small business participation in subcontract awards. The SBA and the procurement office will freely interchange, at the operating level, information resulting from these surveys.

**§ 18-1.707-7 Small Business Administration review of agency records.**

To the extent that subcontracting records are maintained in procurement offices, such records shall be made available to the Small Business Administration, upon request, for review.

**§ 18-1.708 Purchases under Federal Supply Schedule contracts.**

Where orders are placed under Federal Supply Schedule contracts and one or more of the contractors for an item on a given schedule are small business concerns, the orders shall be placed in accordance with the policies and procedures set forth in § 18-5.101-3.

**Subpart 18-1.8—Labor Surplus Area Concerns**

**§ 18-1.800 Scope of subpart.**

This subpart sets forth NASA policy and procedures with respect to aiding areas of persistent or substantial labor surplus and sections of concentrated unemployment or underemployment, hereinafter referred to as "labor surplus areas," in the United States, its possessions, and Puerto Rico. This part implements Defense Manpower Policy No. 4 (Revised), October 16, 1967 (32A CFR Chapter 1), and U.S. Department of Labor Regulations, 29 CFR Part 8, as amended, October 16, 1967. Defense Manpower Policy No. 4 states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

**§ 18-1.801 Definitions.**

**§ 18-1.801-I Labor surplus area concern includes.**

(a) Concerns (1) located in or near sections of concentrated unemployment or underemployment which have been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections and (2) which will agree to perform, or cause to be performed by certified concerns, a substantial proportion of a contract in or near such sections; also concerns which, though not so certified, agree to have a substantial proportion of a contract performed by certified concerns in or near such sections; it also includes concerns which, though not so certified, agree to have a substantial proportion of a contract performed by certified concerns in or near such sections. Such concerns are herein referred to as "certified-eligible concerns." The term "certified-eligible" is derived from 29 CFR Part 8, which makes a firm eligible for first preference in the award of certain contracts on the basis that such firm agrees to employ disadvantaged persons in performance of a substantial proportion of the contract; and that such employment must be provided by a certified firm, whether such firm be the prime or a first tier subcontractor. A certified-eligible concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by first tier certified concerns acting as subcontractors) amount to more than 25 percent of the contract price.

(b) Persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Persistent Labor Surplus." A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that will be incurred by the prime or first tier subcontractors on account of manufacturing or production performed in such areas and in or near a section of concentrated unemployment or underemployment by a certified-eligible prime or first tier certified subcontractors amount to more than 50 percent of the contract price.

(c) Substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus." A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that will be incurred by the prime or first tier subcontractors on account of manufacturing or production performed in substantial and persistent labor surplus areas and in or near a section of concentrated unemployment or underemployment by a certified-eligible prime or certified first tier subcontractors

amount to more than 50 percent of the contract price.

*Example A.* John Doe Company, manufacturing in or near a section of concentrated unemployment or underemployment and holding a current Certificate of Eligibility issued by the Secretary of Labor with respect to an agreement to employ disadvantaged persons residing in such section, bids on a contract at \$1,000. John Doe Company will incur the following costs:

Direct labor.....	\$100
Overhead.....	100
Purchase of materials from NOP Company which manufactures the materials in a section of concentrated unemployed and underemployment and holds a current Certificate of Eligibility issued by the Secretary of Labor.....	200
Purchase of materials from RST Company, which manufactures the materials in a full employment area....	500

John Doe Company qualifies as a labor surplus area concern (certified-eligible concern) since costs to be incurred by John Doe, the certified-eligible prime and its first tier certified subcontractor amount to more than 25 percent of the contract price.

*Example B.* ABC Company, manufacturing in a full employment area, bids on a contract at \$1,000. ABC Company will incur the following costs:

Direct labor.....	\$200
Overhead.....	200
Purchase of materials from XYZ, which manufactures the materials in a labor surplus area not classified as a section of concentrated unemployment or underemployment....	400
Purchase of materials, from NOP Company, which manufactures the materials in a section of concentrated unemployment or underemployment and holds a current Certificate of Eligibility issued by the Secretary of Labor with respect to an agreement to employ disadvantaged persons in such section.....	110

ABC Company qualifies as a labor surplus area concern since costs to be incurred by its first tier labor surplus area subcontractors amount to more than 50 percent of the contract price.

*Example C.* DEF Company, manufacturing in a labor surplus area, bids on a contract at \$1,000. DEF Company will incur the following costs:

Direct labor.....	\$200
Overhead.....	200
Purchase of materials from UVW, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier).....	550

DEF Company does not qualify as a labor area concern regardless of whether UVW's supplier manufacturers in a labor surplus area.

*Example D.* GHI Company, manufacturing in a labor surplus area, bids on a contract at \$1,000. GHI Company will incur the following costs:

Direct labor.....	\$230
Overhead.....	275
Purchase of materials from RST, which manufactures the materials in a full employment area.....	425

GHI Company qualifies as a labor surplus area concern since it will incur costs in a labor surplus area amounting to more than 50 percent of the contract price.

§ 18-1.801-2 Labor surplus area means a geographic area which at the time of award is:

(a) An appropriate section of a city, State, or an Indian Reservation classified by the Secretary of Labor as a "section of concentrated unemployment or underemployment" (cities and States with classified sections of unemployment or underemployment), as well as eligible Indian Reservations are listed by the Department of Labor in its publication "Area Trends in Employment and Unemployment"); or

(b) Classified by the Department of Labor as an "Area of Persistent Unemployment" (herein referred to as an area of persistent labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment," or

(c) Classified by the Department of Labor as an "Area of Substantial Unemployment" (herein referred to as an area of substantial labor surplus) and listed as such by that Department in its publication "Area Trends in Employment and Unemployment," or

(d) Not classified as in paragraph (b) or (c) of this section, but which is individually certified as an area of persistent or substantial unemployment by the Department of Labor at the request of a prospective contractor.

§ 18-1.801-3 Small business concern.

See Subpart 18-1.7 for definition.

§ 18-1.802 General policy.

Except as provided in § 18-1.806 with respect to depressed industries, it is the policy of the National Aeronautics and Space Administration to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform substantially in labor surplus areas. In carrying out this policy, to accommodate the small business policies of Subpart 18-1.7, preference shall be given in the following order of priority to (a) certified-eligible concerns which are also small business concerns; (b) other certified-eligible concerns; (c) persistent labor surplus area concerns which are also small business concerns, (d) other persistent labor surplus area concerns, (e) substantial labor surplus area concerns which are also small business concerns, (f) other substantial labor surplus area concerns and (g) small business concerns which are not labor surplus area concerns.

But in no case will price differentials be paid for the purpose of carrying out this policy. Heads of installations and procurement officers are responsible for the effective implementation of the Labor Surplus Area Program within their respective installations. The contracting officer is responsible for compliance with the policy and procedures relating to labor surplus areas and for de-

termining the final action to be taken with respect to individual procurement actions. The labor surplus area functions should generally be performed by the small business specialists or the individual designated to perform the small business functions where a full-time small business specialist is not warranted (see § 18-1.704-2).

§ 18-1.803 Application of policy.

(a) Within the policy set forth in § 18-1.802, the following shall be applied to procurements which are estimated to exceed \$10,000 and may, if deemed practicable by the contracting officer, be applied to procurements between \$2,500 and \$10,000:

(1) Negotiated procurements shall, where procurement objectives permit, be awarded to labor surplus area concerns: *Provided*, That in no case shall price differentials be paid for the purpose of carrying out this policy;

(2) Where appropriate, procurements shall be made from labor surplus area concerns by partial set-aside procedures, in accordance with § 18-1.804, and such set-asides shall be given preference over any small business set-aside (but no total set-aside shall be made for labor surplus area concerns);

(3) Information identifying labor surplus areas shall be disseminated promptly to procurement personnel;

(4) Department of Labor certification (see § 18-1.801-2(d)) shall be considered conclusive with respect to the particular procurement concerned;

(5) Even though less than a complete bidders' list is to be used pursuant to § 18-2.205-4, all prospective contractors in labor surplus areas shall be solicited, except that only a pro rata number of prospective labor surplus area concerns may be solicited when the bidders' list is composed predominantly of labor surplus area concerns and the estimated award is not expected to be more than \$25,000;

(6) Subcontracting with concerns in labor surplus areas shall be encouraged in accordance with § 18-1.805.

(b) Procurements placed in labor surplus areas as a result of preference procedures shall be reported on NASA Form 507, Individual Procurement Action Report, in accordance with procedures prescribed in § 18-16.901.

(c) Any preference under the "Buy American Act" due to performance in labor surplus areas (see § 18-6.104-4) shall be in addition to the assistance accorded pursuant to this subpart.

(d) The Procurement Office, NASA Headquarters shall cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Office of Emergency Preparedness to achieve the objectives of this subpart.

§ 18-1.804 Partial set-asides for labor surplus area concerns.

§ 18-1.804-1 General.

(a) (1) In accordance with the policies and procedures set forth in § 18-1.802 and § 18-1.803, a portion of each

procurement shall be set aside for labor surplus area concerns if:

(i) The procurement is severable into two or more economic production runs or reasonable lots; and

(ii) One or more labor surplus area concerns are expected to qualify as labor surplus area concerns and to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that bids or proposals will be received from only two concerns with technical competency and productive capacity (one concern which will not qualify as a labor surplus area concern and one concern which will qualify as a labor surplus area concern).

(2) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(i) Price and procurement history of the items;

(ii) Open industry capacity;

(iii) Startup cost including special tooling requirements;

(iv) Delivery schedule; and

(v) Nature of item and quantity being procured.

Before a portion or portions constituting more than 50 percent of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(3) In furtherance of the policy to assure that a fair proportion of procurement is placed with small business concerns, each labor surplus area set aside shall provide that, in addition to labor surplus area concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to labor surplus area concerns. In this respect, see applicable provisions of § 18-1.804-2(b) for notice to bidders or offerors, and § 18-1.804-2(c) for conduct of set-aside negotiations.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large part of previous procurements of the item in question has been placed with labor surplus area concerns;

(2) A period of less than 30 days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals;

(3) The procurement is classified; or

(4) Labor surplus area concerns are receiving a fair proportion of contracts.

#### § 18-1.804-2 Set-aside procedures.

(a) Where a portion of a procurement is to be set aside pursuant to § 18-1.804-1, the procurement shall be divided into a non-set-aside portion and a set-aside

portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b) (1) In advertised procurements involving set-asides pursuant to this subpart, each invitation for bids shall contain substantially the following notice. In negotiated procurements, the notice shall be appropriately modified for use with requests for proposals. The notice shall be made a part of each contract under the set-aside portion of the procurement.

#### NOTICE OF LABOR SURPLUS AREA SET-ASIDE (JULY 1970)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 130 percent of the highest unit price at which an award is made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Certified-eligible concerns which are also small business concerns.

Group 2. Other certified-eligible concerns.

Group 3. Persistent labor surplus area concerns which are also small business concerns.

Group 4. Other persistent labor surplus area concerns.

Group 5. Substantial labor surplus area concerns which are also small business concerns.

Group 6. Other substantial labor surplus area concerns.

Group 7. Small business concerns which are not labor surplus area concerns.

Within each of the above groups negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which are considered in evaluating bids on the non-set-aside portion except where a responsive bid has been submitted on the non-set-aside portion at a unit price which when so adjusted is lower than the adjusted highest unit price awarded on the non-set-aside portion but could not be accepted because of quantity limitations or other consideration (such as the bidder's responsibility). In the latter case if the quantity limitation or other considerations do not preclude consideration of the unit price of such unaccepted bid at the time of negotiation for the set-aside portion, a quantity of the set-aside portion equal to the quantity of such unaccepted bid shall be offered to eligible concerns in their order of priority at the adjusted unit price of such unaccepted bid. If no eligible bidder will take the entire quantity so offered at the adjusted unit price of the unaccepted bid, then all eligible concerns in their order of priority shall be offered any lesser portion at the

same price. (In the event more than one such unaccepted bid is involved, the same procedure shall be applied successively to each such bid on negotiation for the set-aside portion.) Subject to the conditions set forth below any remaining quantity of the set-aside portion shall be offered to eligible concerns in their order of priority at the adjusted highest unit price awarded on the non-set-aside portion. If such an unaccepted bid is submitted by a concern eligible to participate in the set-aside, such concern must accept a quantity of the set-aside portion equal to the quantity of the unaccepted bid at the adjusted unit price of the unaccepted bid before any portion of the set-aside may be awarded to that concern at a higher price. If such an unaccepted bid is submitted by a concern not eligible to participate in the set-aside, a quantity of the set-aside portion equal to the quantity of the unaccepted bid must be awarded at the adjusted unit price of such unaccepted bid before any portion of the set-aside is awarded to any eligible concern at a higher price. The Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(b) *Definitions.*

(1) The term "labor surplus area" means a geographical area which is a section of concentrated unemployment or underemployment, a persistent labor surplus area, or a substantial labor surplus area as defined below:

(i) "Section of concentrated unemployment or underemployment" means appropriate sections of a city, State, or an Indian Reservation so classified by the Secretary of Labor. (Cities and States with classified sections of unemployment and underemployment, as well as eligible Indian Reservations are listed by the Department of Labor in its Publication "Area Trends in Employment and Unemployment.")

(ii) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Persistent Labor Surplus" (also called "Area of Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment," or (B) is certified as an area of persistent labor surplus by the Department of Labor pursuant to a request by a prospective Contractor.

(iii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Trends in Employment and Unemployment," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective Contractor.

(2) The term "labor surplus area concern" includes certified-eligible concerns, persistent labor surplus area concerns, and substantial labor surplus area concerns, as defined below:

(i) "Certified-eligible concern" means a concern (A) located in or near a section of concentrated unemployment or underemployment which has been certified by the Secretary of Labor in accordance with 29 CFR 8.7(b) with respect to the employment of disadvantaged persons residing within such sections, and (B) which will agree to perform, or cause to be performed by a certified concern, a substantial proportion of a contract in or near such sections; it includes a concern which, though not so certified, agrees to have a substantial proportion of a contract performed by certified concerns in or near such sections. A concern shall be deemed to perform a substantial proportion

of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections (by itself if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price.

(ii) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that will be incurred by the prime or first-tier subcontractors on account of manufacturing or production performed in such areas and in or near a section of concentrated unemployment or underemployment by a certified-eligible prime or first-tier certified subcontractors amount to more than 50 percent of the contract price.

(iii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that will be incurred by the prime or first tier subcontractors on account of manufacturing or production performed in substantial and persistent labor surplus areas and in or near a section of concentrated unemployment or underemployment by a certified-eligible prime or first tier certified subcontractors amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(4) "Unit price" shall include evaluation factors added for the rent-free use of Government property.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided*, That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Eligibility Based on Certification.* Where eligibility for preference is based upon the status of the bidder as a "certified-eligible concern," the bidder shall furnish with his bid evidence of its certification or its first tier subcontractors' certification by the Secretary of Labor.

(e) *Agreement.* The bidder agrees that: (1) If awarded a contract as a certified-eligible concern under the set-aside portion of this procurement he will perform, or cause

to be performed, a substantial proportion of the contract in or near sections of concentrated unemployment or underemployment and in the performance of such contract or subcontracts, will employ a proportionate number of disadvantaged persons residing within sections of concentrated unemployment or underemployment in accordance with plans approved by the Secretary of Labor; (ii) if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; or in or near sections of concentrated unemployment or underemployment by himself if certified or by first tier certified subcontractors; and (iii) if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the contract in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas or in or near sections of concentrated unemployment or underemployment by himself if certified or by first tier certified subcontractors.

(2) In requirements contracts involving a labor surplus area set-aside add the following to the above clause:

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(c) (1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 130 percent of the highest award made or to be made on the non-set-aside portion, taking into account the evaluation factors for rent-free use of Government property pursuant to Subpart 18-13.5, and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notice: *Provided*, That, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 18-2.407-6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion. A bidder or offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of

additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price prior to award, acceptance of refunds, or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiations, as appropriate, in accordance with existing regulations (see § 18-3.201-2(a) and § 18-3.210-3 as to negotiation). Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see § 18-1.305-2) to insure that it is realistic in the light of all relevant factors including the capabilities of labor surplus concerns.

(2) When the award price for a non-set-aside portion has been determined and where an award will be made to a labor surplus area concern and the same labor surplus area concern is entitled to receive a set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the "Examination of Records" clause, applicable to the set-aside portion only.

§ 18-1.304-3 Withdrawal of set-asides.

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

§ 18-1.304-4 Contract authority.

Contracts for set-aside made under this Subpart 18-1.8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes see § 18-3.201-2(a) for contracts awarded to labor surplus area concerns and § 18-3.201-2(b) for contracts awarded to small business concerns which are not labor surplus area concerns.

§ 18-1.305 Subcontracting with labor surplus area concerns.

§ 18-1.305-1 General policy.

It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in § 18-1.302 where this can

be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

**§ 18-1.805-2 Labor surplus area subcontracting program.**

The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from \$5,000 to \$500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in § 18-1.805-3(a). In contracts which may exceed \$500,000, the contractor is required, pursuant to the clause set forth in § 18-1.805-3(b), to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

**§ 18-1.805-3 Required clauses.**

(a) The "Utilization of Concerns in Labor Surplus Areas" clause set forth below shall be inserted in all contracts in amounts which may exceed \$5,000, except—

(1) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico; and

(2) Contracts for construction.

**UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (JULY 1970)**

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in or near sections of concentrated unemployment or underemployment as a certified-eligible concern or in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) certified concerns which are also small business concerns; (ii) other certified concerns; (iii) persistent labor surplus area concerns which are also small business concerns; (iv) other persistent labor surplus area concerns; (v) substantial labor surplus area concerns which are also small business concerns; (vi) other substantial labor surplus area concerns; and (vii) small business concerns which are not labor surplus area concerns.

(b) The "Labor Surplus Area Subcontracting Program" clause below shall be included in all contracts which may exceed \$500,000, but which contain the clause required by paragraph (a) of this section and which, in the opinion of the

contracting officer, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed \$500,000, which in the opinion of the contracting officer offer substantial subcontracting possibilities, shall be urged to accept the following clause:

**LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (JULY 1970)**

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Concerns in Labor Surplus Areas" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Concerns in Labor Surplus Areas" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) For subcontracting purposes, a "labor surplus area concern" is a concern which will perform a substantial proportion of any contract awarded to it (i) in or near "Sections of concentrated unemployment or underemployment" as a certified concern, (ii) in "Areas of Persistent Labor Surplus" or (iii) in "Areas of Substantial Labor Surplus," as designated by the Department of Labor. A certified concern shall be deemed to perform a substantial proportion of a contract in or near sections of concentrated unemployment or underemployment if the costs that the concern will incur on account of manufacturing or production in or near such sections amount to more than 25 percent of the price of such contracts; a concern shall be deemed to perform a substantial proportion of a contract in a persistent or substantial labor surplus area if the costs that the concern will incur on account of manufacturing or production in such area amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of \$500,000 and which contains the clause entitled "Utilization of Concerns in Labor Surplus Areas," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

**§ 18-1.805-4 Review of subcontracting program.**

The adequacy of the contractor's Labor Surplus Area Subcontracting Program shall be reviewed in accordance with the procedures set forth in § 18-1.707-4, and any deficiencies shall be brought to the attention of the contractor's liaison

officer with a request for corrective action.

**§ 18-1.806 Depressed industries.**

**§ 18-1.806-1 General.**

When an entire industry is depressed, the Office of Emergency Preparedness may, under Defense Manpower Policy No. 4, establish appropriate measures on an industrywide, rather than on an area, basis. Designations of such industries are made by Office of Emergency Preparedness Notifications, and such industries will be given special treatment as specified therein. Section 18-1.806-2 reflects pertinent requirements of such notification with respect to petroleum and petroleum products industry. No price differentials will be paid to carry out policies of this notification.

**§ 18-1.806-2 Petroleum and petroleum products industry (Notification No. 58).**

There shall be no labor surplus area set-asides in this industry.

**Subpart 18-1.9—Responsible Prospective Contractors**

**§ 18-1.900 Scope of subpart.**

This subpart sets forth:

(a) General policy with respect to responsibility of prospective contractors;

(b) Minimum standards for responsible prospective contractors;

(c) Procedures for determining responsibility of prospective contractors;

(d) Policy and procedures with respect to preaward surveys; and

(e) Policy concerning subcontractor responsibility.

**§ 18-1.901 Applicability.**

This subpart applies to procurements from contractors located in the United States, its possessions, and Puerto Rico; and will be applied in other places except where it is inconsistent with the laws and customs of the place where the prospective contractor is located. It is not applicable to procurements from:

(a) Other governments, including State and local governments;

(b) Canadian Commercial Corporation;

(c) Other U.S. Government agencies or their instrumentalities (such as Federal Prison Industries, Inc.); or

(d) National Industries for the Blind.

**§ 18-1.902 General policy.**

Contracts shall be awarded only to responsible prospective contractors. A responsible prospective contractor is one who meets the minimum standards set forth in § 18-1.903-1, and such additional standards as may be prescribed for specific procurements. The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional procurement or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a marginal supplier solely because he submits the

lowest bid or offer. A prospective contractor must demonstrate affirmatively his responsibility, including, when necessary, that of his proposed subcontractors. The contracting officer shall make a determination of nonresponsibility if, after compliance with §§ 18-1.905 and 18-1.906, the information thus obtained does not indicate clearly that the prospective contractor is responsible. Recent unsatisfactory performance, in either quality or timeliness of delivery, whether or not default proceedings were instituted, is an example of a problem which the contracting officer must consider and resolve as to its impact on the current procurement prior to making an affirmative determination of responsibility. Doubt as to productive capacity or financial strength which cannot be resolved affirmatively shall require a determination of nonresponsibility.

**§ 18-1.903 Minimum standards for responsible prospective contractors.**

**§ 18-1.903-1 General standards.**

A prospective contractor must meet the following minimum standards as they relate to the particular procurement under consideration:

(a) Have adequate financial resources or the ability to obtain such resources as required during performance of the contract (see §§ 18-1.904(d) and 18-1.905-2, and for Small Business Administration (SBA) certificates of competency, see § 18-1.705-4);

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental (for (SBA) certificates of competency, see § 18-1.705-4);

(c) Have a satisfactory record of performance (contractors who are seriously delinquent in current contract performance, when the number of contracts and the extent of delinquencies of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to fulfill this requirement). Past unsatisfactory performance, due to failure to apply necessary tenacity or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility and in the case of small business concerns, shall not require submission of the case to the Small Business Administration; see §§ 18-1.705-4(b)(4) and 18-1.905-2;

(d) Have a satisfactory record of integrity (in the case of a small business concern, see § 18-1.705-4(c)(6));

(e) Be otherwise qualified and eligible to receive an award under applicable laws and regulations; e.g., Subpart 18-12.6;

(f) Have the necessary experience, organization, operational controls, technical qualifications, skills, and facilities, or the ability to obtain them, including the ability to subcontract effectively (this standard includes, where appropriate, such elements as adequacy of production control procedures; quality assurance measures, including those applicable to

materials produced or services performed by subcontractors (see § 18-1.906));

(g) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. Where a prospective contractor proposes to use the facilities or equipment of another concern, not a subcontractor, or of his affiliate (see § 18-1.904(d)), all existing business arrangements, firm or contingent, for the use of such facilities or equipment shall be considered in determining the ability of the prospective contractor to perform the contract;

(h) Display a willingness to conform to the "Equal Opportunity" clause, or, if applicable, the "Equal Opportunity in Federally Assisted Construction Contracts" clause (see § 18-12.802); and

(i) Be a manufacturer, regular dealer, construction contractor, or service contractor, as defined in §§ 18-12.603-1, 18-12.603-2, 18-1.204, and 18-1.229 respectively.

**§ 18-1.903-3 Special standards.**

When the situation warrants, contracting officers shall develop with the assistance of technical personnel or other specialists, special standards of responsibility to be applicable to a particular procurement or class of procurements. Such special standards may be particularly desirable where a history of unsatisfactory performance has demonstrated the need for insuring the existence of unusual expertise or specialized facilities necessary for adequate contract performance. The resulting standards shall form a part of the solicitation and shall be applicable to all bidders or offerors.

**§ 18-1.903-4 Ability to meet certain minimum standards.**

Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see § 18-1.906), acceptable evidence of his ability to obtain financial resources, experience, organization, technical qualifications, skills, and facilities (see § 18-1.903-1 (a), and (f)) generally shall be a commitment or explicit arrangement which will be in existence at the time the contract is to be awarded for the rental, purchase or acquisition of such resources, equipment, facilities, or personnel.

**§ 18-1.904 Determinations of responsibility and nonresponsibility.**

(a) Prior to the award of a contract to any person or firm, the contracting officer shall first determine that such person or firm is responsible within the meaning of §§ 18-1.902 and 18-1.903. The signing of the contract shall be considered to be a certification by the contracting officer that he has determined that the prospective contractor is responsible with respect to that contract.

(b) When the contract is estimated to exceed \$10,000 and the contracting officer considers that a statement of responsibility is advisable, the contracting officer shall prepare a written statement of the facts upon which he bases his determination of responsibility. Rel-

evant factors for consideration in determining whether such a statement is advisable would include the value, importance, or technical aspects of the procurement, or lack of previous experience with the prospective contractor. However, when a preaward survey is made in connection with a contract that exceeds \$10,000, the contracting officer shall prepare a written statement of the facts upon which he bases his determination of responsibility. When the contracting officer prepares a statement, any supporting documents or records, including preaward surveys, SBA certificates of competency, and other information to support determinations of the responsibility of subcontractors will be attached to the statement.

(c) When a bid or offer, on which an award would otherwise be made, is rejected because the prospective contractor is found to be nonresponsible, a statement of nonresponsibility shall be made.

(d) Affiliated concerns (see § 18-1.701-1(c)) shall be considered as separate entities in determining whether the one which is to perform the contract meets the applicable standards for a responsible prospective contractor.

**§ 18-1.905 Procedures for determining responsibility of prospective contractors.**

**§ 18-1.905-1 General.**

(a) Generally, determinations of responsibility and nonresponsibility shall be made only on those prospective contractors who are within the range of consideration for award of the contract.

(b) Before making determinations of responsibility, the contracting officer shall have in his possession, or obtain, information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in § 18-1.903 to the extent that such standards are applicable to a specific procurement.

(c) Maximum practicable use shall be made of current information on file or within the knowledge of personnel within NASA, and, when practicable, within other Government agencies. Free interchange with other Government agencies of information pertinent to determinations of responsibility is encouraged. NASA installations shall develop and maintain such pertinent records and experience data as may be useful for the guidance of contracting officers and other personnel concerned. Special attention shall be paid to contractors whose past performance is questionable and new contractors whose reliability is yet unestablished. Upon the request of any NASA contracting officer or other Government agency, information available in such records and data shall be expeditiously furnished.

**§ 18-1.905-2 When information will be obtained.**

Generally, information regarding the responsibility of a prospective contractor (including, in accordance with § 18-1.905-4, preaward survey information when considered necessary) shall be obtained promptly after bid opening or

receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources and performance capability shall be obtained on as current a basis as feasible with relation to the date of contract award.

#### § 18-1.905-3 Sources of information.

Information regarding the responsibility of prospective contractors shall be sought among the following sources:

(a) The "Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" (see § 18-1.601);

(b) From the prospective contractor—including representations and other information contained in or attached to bids and proposals; replies to questionnaires; financial data, such as balance sheets, profit and loss statements, cash forecasts, financial history of the contractor and affiliated concerns; current and past performance records; personnel records; and lists of tools, equipment, and facilities; written statements or commitments concerning financial assistance and subcontracting arrangements; and analyses of operational control procedures. Where it is considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition or for other reasons, prospective contractors may be required to submit affidavits concerning their ability to meet any of the minimum standards set forth in § 18-1.903;

(c) Existing information within NASA—including records on file and knowledge of personnel within the procurement office making the procurement, other procurement offices, related activities, contract administration offices, audit activities, and offices concerned with contract financing;

(d) Publications—including credit ratings, trade and financial journals; business directories and registers; and

(e) Other sources—including suppliers, subcontractors, and customers of the prospective contractor; banks and financial companies; commercial credit agencies; Government departments and agencies; purchasing and trade associations; better business bureaus and chambers of commerce.

#### § 18-1.905-4 Preaward surveys.

(a) *General.* A preaward survey is an evaluation of a prospective contractor's capability to perform under the terms of a proposed contract. Such evaluation shall be used by the contracting officer in determining the prospective contractor's responsibility. The evaluation may be accomplished by use of (1) data on hand, (2) data from another Government agency or commercial source, (3) an on-site inspection of plant and facilities to be used for performance on the proposed contract, or (4) any combination.

(b) *Circumstances under which performed.* (See § 18-1.905-50(a).)

(c) *Workload and financial capacity.* Regardless of the apparent sufficiency of information available to the procure-

ment office indicating responsibility with respect to the standards set forth in § 18-1.903-1 (a), and (b) in procurements which are significant either in dollar value or in the critical nature of the requirement, consideration shall be given to requesting the survey activity to verify information regarding current workload and financial capacity.

(d) *Coordination.* Preaward surveys may be conducted by one NASA installation for another or by other Government agencies for NASA. In this regard, NASA activities will give primary consideration to maximum utilization of the Defense Contract Administration Services Regions, or a military department as appropriate, for performance of preaward surveys. This will eliminate duplication of effort, achieve economy and increase efficiency.

#### § 18-1.905-50 Procedures for requesting preaward surveys.

(a) When the contracting officer determines that a preaward survey is required, he shall request a survey on DD Form 1524 in the detail commensurate with the dollar value and complexity of the procurement. In requesting a preaward survey, the contracting officer shall call to the attention of the survey activity any factors which should receive special emphasis. The factors selected by the contracting officer shall be applicable to all firms responding to the solicitation and shall be considered in all preaward surveys performed for the same solicitation. In the absence of specific instructions from the procurement office, the scope of the preaward survey shall be determined by the office conducting the survey.

(b) If a complete survey of financial responsibilities is required, the appropriate blocks in part I, section III of DD Form 1524 will be checked.

(c) Requests for surveys may be submitted to the NASA installation located nearest to the prospective contractor, to the military department, or the appropriate Defense Contract Administration activity with which NASA has a service agreement (see § 18-1.905-4). The survey shall be requested on Preaward Survey of Prospective Contractor (DD Form 1524) indicating in part I, section III thereof the scope of the survey desired. Factors requiring emphasis not enumerated in part I, section III should be listed by the procurement office under item "14" of that section. A survey may be requested by telegraphic communication containing the data required by part I, sections I, II, and III of the form. A survey may be requested by telephone but shall be confirmed immediately on DD Form 1524. Unless previously furnished, a copy of the solicitation and such drawings and specifications as deemed necessary by the procurement office, shall be supplied with the preaward survey request. The procurement office shall forward any information indicating previous unsatisfactory contract performance with the preaward survey request, except where it is known that the survey activity already has this information.

#### § 18-1.905-51 Conditions which normally do not require a preaward survey.

Normally, preaward surveys are not required when:

(a) The data is available from other sources;

(b) The contract is for study or research only;

(c) The contract will be a firm fixed-price contract for off-the-shelf items when the contract amount is less than \$100,000;

(d) The pending contract will be a definitive contract superseding a letter contract;

(e) An order is to be placed under an existing Government contract;

(f) The prospective contractor has proved his reliability by recent and sustained or existing satisfactory performance; or

(g) When the source has been recommended by the NASA Source Evaluation Board.

#### § 18-1.905-52 NASA conducted preaward surveys.

(a) Upon receipt of the request for preaward surveys, the NASA survey officer shall:

(1) Familiarize himself with the terms of the invitation for bid or request for proposal;

(2) Review information available from other sources relative to the contractor;

(3) Make an onsite survey of the plant concerned; and

(4) Complete the DD Form 1524 as required.

(b) Upon completion of the survey, the survey officer shall prepare a narrative report of survey information and conclusions. In preparing the report, the survey officer should insure that all the information required by the contracting officer and, in each area of investigation, a definite statement as to responsibility and capability of the contractor, have been included. The reports should be brief, clear, and complete, and should not include matters other than those specifically requested by the contracting officer except as indicated in § 18-1.905-4.

#### § 18-1.906 Subcontractor responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractor's responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractors' responsibility shall generally be a function performed by the prospective prime contractor. (See § 18-1.603(c) relating to subcontractors listed on the "Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors.") A prospective prime contractor may be required to (1) indicate in writing, the responsibility of proposed subcontractors, or (2) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability.

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (1) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (2) supplies or services, a substantial portion of which will be subcontracted. The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor.

**§ 18-1.907 Disclosure of preaward data.**

Data, including information obtained from a preaward survey, leading to a determination of the responsibility of prospective contractors shall not be released outside the Government and shall not be made available for inspection for inspection by individuals, firms, or trade organizations. However, such data may be disclosed to, or summarized for, other elements within the Government on their request. Such information shall be made available to procurement personnel of NASA and other Government agencies upon request in accordance with § 18-1.905-1. In connection with making a determination of responsibility, information disclosed by such data may be discussed with prospective contractor, as necessary.

**Subpart 18-1.10-Publicizing Procurement Actions.**

**§ 18-1.1001 General policy.**

It is NASA policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in NASA procurement programs.

**§ 18-1.1002 Dissemination of information relating to invitations for bids and requests for proposals.**

**§ 18-1.1002-1 Availability of invitations for bids and requests for proposals.**

A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the Commerce Business Daily, including specifications and other pertinent information, shall be maintained by the issuing office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. Where a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of a procurement, requests for proposals shall be mailed or

otherwise provided upon request to firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pickup at the contracting office, to publishers, trade associations, procurement information services, and other members of the public having a legitimate interest therein; otherwise, the procurement office may limit the availability of such information to review at such office. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the procurement, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed procurements normally do not require voluminous specifications or drawings. With regard to classified procurements, the foregoing instructions apply to the extent consistent with NASA security instructions and procedures.

**§ 18-1.1002-2 Limited availability of certain specifications, plans, and drawings.**

Where the procurement office is not in possession of complete sets of specifications, plans, and drawings, or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with § 18-1.1002 is impracticable, the solicitation shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined.

**§ 18-1.1002-4 Displaying in public place.**

A copy of each solicitation for an unclassified procurement in excess of \$2,500 shall be displayed at the contracting office, and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened.

**§ 18-1.1002-5 Information releases to newspapers and trade journals.**

A brief announcement of the proposed purchase may be made available to newspapers, trade journals, and magazines for publication without cost to the Government.

**§ 18-1.1003 Synopses of proposed procurements.**

**§ 18-1.1003-1 Department of Commerce synopsis.**

(a) The "Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards," informally known as "Department of Commerce Synopsis" or

"Synopsis," is published daily, except Saturdays, Sundays, and holidays, by the U.S. Department of Commerce, Chicago, Ill. Section 8 of the Small Business Act (15 U.S.C. 637(e)) empowers the Secretary of Commerce to obtain notice of certain proposed procurement actions from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the Department of Commerce Synopsis immediately after the necessity for the procurement is established.

(b) The primary purpose of the Department of Commerce Synopsis is to provide industry with information concerning current Government contracting and subcontracting opportunities, including information as to the identity and location of Government contracting offices and prime contractors having current or potential need for certain types of products or services.

(c) The Department of Commerce Synopsis is available on an annual subscription basis, and subscriptions can be entered at any Department of Commerce office. Complimentary subscriptions are available to participating Government activities upon request.

**§ 18-1.1003-2 General requirements.**

(a) Except for procurements described in paragraphs (b) and (c) of this section, every proposed advertised or negotiated procurement, including modifications to existing contracts when new funds are obligated for additional supplies and services, made in the United States, its possessions, and Puerto Rico which may result in an award in excess of \$10,000 shall be publicized promptly in the Commerce Business Daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards". Modifications to an existing contract resulting from price changes, engineering changes, overruns, definitization of letter contracts, and other similar transactions need not be publicized in the Commerce Business Daily. In addition to the information normally included in a synopsis, the names and addresses of all firms which have been invited by NASA to submit proposals shall be furnished to the Department of Commerce for each proposed negotiated procurement which may result in an award of \$100,000 or more where it would be in the Government's interest or where subcontracting opportunities exist. A copy of each synopsis sent to the Department of Commerce shall be furnished to the Procurement Office, NASA Headquarters (Code KD-4) and to the Office of Public Affairs, NASA Headquarters (Attention: Public Information Division) as required by this § 18-1.1003-2.

(b) Classified procurements, where the information necessary to be included in the Synopsis would disclose classified information or where the mere disclosure of the Government's interest in the area of the proposed procurement would violate security requirements, shall not be publicized in the Synopsis. All other classified procurements shall be publicized in the Synopsis, even though access

to classified matter might be necessary in order to submit a proposal or to perform the contract (see § 18-1.1003-9(e)(3)). The intent of the exception for classified procurement in the synopsis requirements of Public Law 87-305 is not to exempt every classified procurement from publicizing, but to provide a safeguard against violating security requirements.

(c) The following need not be publicized in the Synopsis:

(1) See paragraph (b) of this section;

(2) Procurement of perishable subsistence supplies;

(3) Procurement of electric power or energy, gas (natural or manufactured), water or other utility services;

(4) Procurement (whether advertised or negotiated) which is of such urgency that the Government would be adversely affected by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than 15 calendar days from the date of transmittal of the synopsis or the date of issuance of the solicitation, whichever is earlier;

(5) Procurement to be made by an order placed under an existing contract;

(6) Procurement to be made from or through another Government department or agency, or a mandatory source of supply such as an agency for the blind under the blind-made products program;

(7) Procurement of personal or professional services to be negotiated under § 18-3.204;

(8) Procurement from educational institutions to be negotiated under § 18-3.205; and

(9) Procurement in which only foreign sources are to be solicited.

#### § 18-1.1003-3 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids, proposals or quotations, procurement offices should, when feasible, synopsise proposed procurements at least 10 days before the issuance of solicitations, in accordance with § 18-1.1003-9(b)(8).

#### § 18-1.1003-4 Preinvitation notices.

Where preinvitation notices (see § 18-2.205-4) are used, the preinvitation information included in that notice shall be included in the synopsis. This information need not be republished in the synopsis when the invitation for bids is issued. However, if the preinvitation notice contains a set-aside provision which is later canceled (e.g., because of a lack of small business response) then, the procurement shall be synopsized the second time at the time the solicitation is issued.

#### § 18-1.1003-5 Publication of procurements of less than \$10,000.

When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements of less than \$10,000 may be publicized in the Commerce Business Daily.

#### § 18-1.1003-6 Synopsis of subcontract opportunities.

(a) *By Contracting officers.* (1) In order to broaden the opportunity in negotiated procurement for subcontracting by small business concerns and others, contracting officers, shall, unless not in the Government's interest or subcontracting opportunities do not exist, publish in the Commerce Business Daily the names and addresses of firms to whom requests for proposals have been issued. This procedure will offer opportunity to small business concerns and others interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement. An addition to the regular synopsis prepared in accordance with § 18-1.1003-9 shall be made as set forth in § 18-1.1003-9(f).

(2) Contracting officers shall, unless not in the Government's interest or subcontracting opportunities do not exist, publish in the Commerce Business Daily the names and addresses of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising and will therefore be issued invitations for bids in the second step (see § 18-2.503). Such lists should be followed by a statement substantially as follows:

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(b) *By prime contractors and subcontractors.* Prime contractors and subcontractors should be encouraged to use the Commerce Business Daily to publicize opportunities in the field of subcontracting stemming from their Government business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, Ill. 60680, under the heading "Subcontracting Assistance Wanted" and in the form of the following example.

XYZ CO. ATTN JOHN Z. SMITH, TELE. NO. RANDOLPH 6-1111, 102 FIRST AVE., CHICAGO, ILL. 60607, seeks Subcontractor on items to be used in connection with Contract No. ----- awarded -----

(Date)

COILS, INDUCTION, DWG. NO. 10-742 ----- 10,000 each.

(Name, description and quantity of other items or services may be included as long as contract assistance is desired under the same contract number)—if interested, make inquiry before ----- to above contractor.

(Date)

#### § 18-1.1003-7 Information regarding specifications, plans, and drawings.

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained.

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement the synopsis shall contain notice of this fact.

(c) Notices of the situations in paragraphs (a) and (b) of this section shall be prepared in accordance with § 18-1.1003-9(f).

#### § 18-1.1003-8 Responsibility of small business specialists.

Small business specialists in each procurement office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this § 18-1.1003. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

#### § 18-1.1003-9 Preparation and transmittal.

(a) Each procurement office shall transmit a synopsis of proposed procurements as follows:

(1) When teletypewriter service is available and time or other considerations indicate that mail service should not be used, all synopses shall be forwarded daily as soon as practical via teletypewriter covering invitations for bids, requests for proposals or quotations issued on that day, or at the earliest practical time prior to issuance of the invitation for bids, requests for proposals or quotations, as is deemed appropriate, to the following address:

Synopsis, Commerce Department, Field Services, Chicago, Ill. 60604.

(2) When the use of mail service does not interfere with the intent of allowing interested firms ample time to submit bids, proposals or quotations, or when teletypewriter service is not available, synopses shall be dispatched by airmail or ordinary mail, whichever is considered most expeditious, addressed as follows: U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, Ill. 60680.

(b) Each synopsis shall be prepared as described below:

(1) Lines in the text commencing flush with left margin will not exceed 60 typewritten spaces. Double spaced lines will be used to describe each procurement action. Descriptions of different procurement actions will be distinguished by indenting the first five spaces.

(2) The first line of the text of the message will state the number of the synopsis being sent. Synopses will be numbered consecutively by the purchasing office during the calendar year. New numerical series beginning with number one will start as of the first working day of January of each year. Double space between this line and the next line.

(3) The second line of the text of the message will state name and location of the procurement office straight across the

page, not to exceed 69 typewritten spaces. No abbreviations are to be used except for name of State. If more than one line is required for name and location of procurement office, double space and continue on subsequent line or lines if necessary, double spacing between each line. The address may include an attention phrase directed to an official by name or title.

(4) Four spaces below the preceding line entry (name and address of purchasing office), indent five spaces. Using the codes set forth in § 18-1.1006, select the code applicable to the procurement action and insert as appropriate. If more than one classification is applicable to the procurement action, enter the code accounting for the largest dollar volume of the procurement. Two hyphens will be inserted after the code followed by a description of the supplies or services being procured stated in narrative paragraph form, double spaced, with each line commencing flush with the left margin. The length of the lines in the description will not exceed 69 typewritten spaces. The description will be clear, concise, and with a minimum number of words but sufficient for understanding by interested parties. It will include, as appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, citations of specification or drawing numbers, or other data. The Federal stock number will also be included where one has been assigned. In the absence of a Federal stock number, the service stock number will be included where one has been assigned. However, where more than six items are listed in the synopsis, stock numbers will be listed only for the six items of highest value. No abbreviations will be used in describing supplies or services, although standard abbreviations may be used in listing the quantity purchase reference numbers, specifications and bid opening date. Punctuation symbols will be used in normal correspondence. Fractions on typewriter keys will not be used but fractions may be expressed by (number)/(number) e.g., 1/16, 1/4, 1/2. The symbols # or @ or \* may not be used since they are not used in teletypewriter operation.

(5) Following the complete description of the supplies or services which will end with a period, two hyphens will be used to set off the quantity to be procured. The quantity usually will be stated in numerals followed by the unit (abbreviations of units are permissible, e.g., lbs., ea., doz.). Whenever it is necessary to use "Indefinite Quantity," the description should include a statement as to the duration of the contract or period covered.

(6) The quantity will be followed by two hyphens before indicating the place of delivery as follows: "Deliveries to -----". Places of delivery should be stated specifically when there are not more than three destinations. When delivery points are more numerous, they will be grouped, if practicable, to show the general geographic area, e.g., "West Coast", "East Coast", or other appro-

appropriate regional description. Otherwise, the places of delivery will be stated as "Various Destinations" or "Destination(s) to be furnished".

(7) The places of delivery will be followed by two hyphens before commencing with the invitation for bids number or other purchase reference number, which may consist of letters, numerals, or abbreviations separated by hyphens or spaces. Invitation for bids numbers shall be identified and followed by the letter "B"; request for proposals and request for quotations numbers shall be followed by the letter "Q." Purchase reference numbers should not be broken or appear on one line carried over on the subsequent line, as the insertion of a hyphen for the carryover would change the reference number.

(8) Two hyphens will be used following the invitation for bids number or purchase reference number to set off the bid opening date or the advance notification date. If the synopsis is published prior to issuance of the invitation for bids or request for proposals or quotations, the synopsis shall include a statement to the effect that requests for such invitations, proposals or quotations should be received not later than 10 days from the date of publication of such synopsis in order to enable the procurement office to mail such invitation for bids, request for proposals, or request for quotations directly to the inquirer at the time of issuance thereof.

(9) On the last page of each issue the Commerce Business Daily publishes footnote information identified as "cuts," which applies to specific procurement situations and which is used in repetitive instances in certain synopses appearing in the publication. Some existing "cuts" are similar to the examples stated in paragraph (e) of this section. Where existing "cuts" include exact wordage applicable to a given synopsis, purchasing offices may incorporate into the body of the letter or teletypewriter transmittal a reference "See Cut No. ----- on the last page of this issue \* \* \*", in lieu of typing out the specific text of the particular entry. Any reference in the transmittal to certain standard "boilerplate" notices in the Commerce Business Daily will be made by title, when applicable. When the procurement situation of a given synopsis deviates from the standard "boilerplate" language, appropriate emphasis should be made in the text of the transmitted synopses.

Note: The purpose of using "cuts" is to reduce the costs of preparing, transmitting and printing synopses. In order to promote cost reduction, contracting officers are urged to use references to "cuts" in preparing synopses, when applicable. If an existing "cut" does not cover a frequently recurring situation, contracting officers of each installation may request the Commerce Business Daily to establish a new "cut." Requests shall be addressed to:

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5399, Chicago, Ill. 60680.

From time to time a list of currently existing "cuts" will be published in a U.S. Department of Commerce Bulletin.

(c) In addition to the foregoing, where the proposed procurement is to be effected in accordance with a small business set-aside (see § 18-1.706) or labor surplus area set-aside (see § 18-1.804), the synopsis shall (1) where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) under 100 percent small business set-aside," or (2) where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of ----- is being reserved for ----- (insert 'small business' or 'labor surplus area' as appropriate) under a partial determination."

Note: To avoid confusion, separate messages should be sent covering proposed procurements which are under 100 percent small business set-aside so that they will be placed in the Department of Commerce's Notice to Small Firm Section.

(d) Notices of specific procurements of research or development projects may state that only those sources which have been technically evaluated will be requested to submit proposals. When it is intended to award a contract based on earlier unsolicited proposals for research and development work the notice shall so state. The name of the proposed contractor shall be given and a brief description of the work proposed, provided that information submitted in confidence is not revealed. The notice may state that a contract is in process of being awarded and therefore, other proposals cannot be considered for this procurement.

(e) Certain procurements involve demands on the contractor which may make it virtually impossible for concerns not having special capabilities or qualifications to compete realistically for the contract. So as to alert such concerns to the need for special capabilities or qualifications and thus permit them to avoid improvement expenditures for bid preparation and the like, procurements for which (1) it is impracticable to distribute plans, drawings or specifications, (2) adequate plans, drawings or specifications to describe requirements are not available, (3) security clearance is required, or (4) other circumstances exist which should be brought to the attention of prospective sources for consideration in order to clearly indicate those qualifying factors affecting the procurement, should be so identified in the synopsis. Appropriate notations for inclusion in the synopsis, such as set forth below, should be devised to meet the needs of specific situations.

(1) Availability of Specifications, Plans or Drawings.

It will be impracticable to distribute the applicable -----

(Insert "specifications," "plans," "drawings" or other appropriate words)

with the solicitation. This data may be examined or obtained at -----

(Be specific)

(2) Complete Data Not Available.  
Available specifications, plans, or drawings, relating to the procurement described below do not fully provide all necessary manufacturing and construction details.

## (3) Security Requirements.

Security clearance will be required of all bidders or offerors (or of the successful bidder or offeror).

## (4) Availability of Background Research Report.

This procurement of basic research is a continuation of an effort conducted for the past ----- A research report  
(Insert period)

containing findings to date is not available to the Government.

## (5) Production Requirements.

The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture.

## (6) Standardization Requirements.

This procurement is for technical equipment. A determination has been made in accordance with 10 U.S.C. 2304(a) (13) that standardization and interchangeability of parts are necessary in the public interest. Therefore, to achieve standardization, it is proposed that Requests for Proposals need be issued only to the following firms:

-----  
(Name of firm) (Address)  
-----

(f) Where the contracting officer determines in accordance with § 18-1.1003-6(a) that the names of firms to whom requests for proposals have been issued should be included in the synopsis. Such synopsis shall contain substantially the following statement:

Requests for Proposals have been issued to the following firms:

-----  
(Name of firm) (Address)  
-----

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(g) Each reporting office will discuss the instructions contained in this paragraph with its communications office so that the manner in which the message is to be transmitted is understood by the office preparing the message and the communications office.

## § 18-1.1004 Disclosure of information prior to award.

(a) A high level of business security must be maintained in order to preserve the integrity of the procurement process. Occasionally, it is necessary to contact potential contractors and others outside NASA to obtain information regarding wage rates, material costs, and the like, in order to prepare Government estimates in connection with proposed procurements; however, these estimates and other details regarding such proposed procurements shall not be publicized nor discussed with prospective contractors.

(b) Maximum information may be made available to the public except (1) advance information on proposed plans regarding procurements, which information would provide undue or discriminatory advantage to private or personal interests, (2) information which is received in confidence, (3) information which requires protection in the public interest or (4) information as to referrals (for technical review, contracting authority, or other reasons) or recommendations made with respect

thereto in connection with any given procurement. This policy applies to all Government personnel who participate directly or indirectly in any stage of the procurement cycle. Information submitted by the bidder or offeror in confidence, and information which might jeopardize the position of the Government or any prospective contractor shall not be released, except as provided in §§ 18-1.1007 and 18-3.106 (see § 18-1.705-4 as to information to be released to the SBA).

## § 18-1.1005 Publicizing award information.

## § 18-1.1005-1 Synopsis of contract awards.

(a) *General.* Awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding \$25,000 in amount, shall be published in the Commerce Business Daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards."

(b) *Preparation and transmittal.* (1) Procurement offices shall prepare and forward single copies of synopses of contract awards, using the same format as prescribed for synopses of proposed procurements in § 18-1.1003-9, to the address below, by airmail or ordinary mail whichever is considered most expeditious, before the close of business at the end of each week.

U.S. Department of Commerce, Commerce Business Daily, Post Office Box 5999, Chicago, Ill. 60680.

(2) The synopsis of contract awards shall contain the following information:

(i) The name and address of procurement office;

(ii) The classification code applicable to the procurement action;

(iii) A clear and concise description of the supplies or services being procured, such description to be followed by the contract number and date and, in parentheses, by the applicable number of the invitation for bids or request for proposals;

(iv) The quantity of each item;

(v) The dollar amount of the award;

(vi) The name and full address of the contractor;

(vii) For f.o.b. destination procurement when total shipments from a point of origin to a point of destination will exceed 200,000 pounds and destinations are firm—

(a) Origin point of shipment when different from (vi) above;

(b) Destination of shipment; and

(c) Scheduled delivery period (beginning and ending dates); and

(viii) When requested by the prime contractor, a statement of the industries, crafts, processes, or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

(3) Procurement offices shall forward, by mail, one copy of the synopsis of contract award as prepared in § 18-1.1005-1 (b) to the Procurement Office, NASA

Headquarters (Code KD-4) and a copy to the Public Affairs Office of the installation.

## § 18-1.1006 Classification codes.

The classification codes to be shown in synopses messages, as required by § 18-1.1003-9(b)4 for proposed procurements and § 18-1.1005-1(b)2 for contract awards, shall be in accordance with this § 18-1.1006. Services (including construction and experimental, developmental, test, and research work) shall be coded with the applicable letter code set forth in § 18-1.1006-1. Supplies shall be coded with the applicable two-digit numerical code set forth in § 18-1.1006-2.

## § 18-1.1006-1 Codes for services.

The code letters to be used for services are as follows:

Code	Description of services
A.	Experimental, developmental, test, and research work (research includes both basic and applied research).
J.	Maintenance and repair of equipment.
K.	Modification, alteration, and rebuilding of equipment.
L.	Technical representative services (Example: Services of technical specialists required to advise and assist with respect to the installation, checking, operation, and maintenance of complex equipment).
M.	Operation and maintenance of Government-owned facility.
N.	Installation of equipment (use Code I. If the procurement also involves modification, alteration, or rebuilding of the equipment).
P.	Salvage services (services required to salvage property of any kind).
Q.	Medical services.
R.	Architect, engineer, expert, and consultant services.
S.	Housekeeping services.
	Examples:
	Utility services (gas, electric, telephone, etc.).
	Laundry and dry cleaning services.
	Custodial—janitorial service.
	Insect and rodent control.
	Packing and crating.
	Storage services.
	Garbage and trash collection.
	Food service.
	Fueling service.
	Fire protection.
	Building and grounds maintenance.
	Care of remains—funeral services.
	Guard services.
T.	Photographic, mapping, printing, and publication services.
	Examples:
	Film processing.
	Cataloging.
	Charting.
	Reproduction.
	Technical writing.
	Art.
	Printing.
U.	Training services.
V.	Transportation services.
	Examples:
	Passenger and cargo transportation.
	Vessel charter.
	Vessel operation.
	Tug service.
	Stevedoring service.
	Vehicle hire.
	Railway equipment charter.
W.	Lease or rental, except transportation equipment.
	Examples:
	Lease of ADP or EAM equipment.
	Lease of earth-moving equipment.

<i>Code</i>	<i>Description of services</i>
X.	Miscellaneous (includes services which do not fall within any other letter code).
Y.	Construction (includes construction of facilities and utilities and ground improvement).
Z.	Maintenance, repair and alteration of real property.

§ 18-1.1006-2 Codes for supplies.

The two-digit code numbers to be used for supplies are as set forth below. The numbers and descriptions used are the same as the 76 assigned commodity groups of the Federal Supply Classification system as shown in the Cataloging Handbook, H 2-1, Federal Supply Classification, Part 1, Groups and Classes. This handbook, together with Cataloging Handbooks H 2-2 (Numeric Index of Classes) and H 2-3 (Alphabetic Index), will be helpful in determining the proper code to be assigned to supply items in synopsis messages. These handbooks may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

<i>Code</i>	<i>Description of supplies</i>
10.	Weapons.
11.	Nuclear ordnance.
12.	Fire control equipment.
13.	Ammunition and explosives.
14.	Guided missiles.
15.	Aircraft; and airframe structural components.
16.	Aircraft components and accessories.
17.	Aircraft launching, landing, and ground handling equipment.
18.	Space vehicles.
19.	Ships, small craft, pontoons, and floating docks.
20.	Ship and marine equipment.
22.	Railway equipment.
23.	Motor vehicles, trailers, and cycles.
24.	Tractors.
25.	Vehicular equipment components.
26.	Tires and tubes.
28.	Engines, turbines, and components.
29.	Engine accessories.
30.	Mechanical power transmission equipment.
31.	Bearings.
32.	Woodworking machinery and equipment.
34.	Metalworking machinery.
35.	Service and trade equipment.
36.	Special industry machinery.
37.	Agricultural machinery and equipment.
38.	Construction, mining, excavating, and highway maintenance equipment.
39.	Materials handling equipment.
40.	Rope, cable, chain, and fittings.
41.	Refrigeration and air-conditioning equipment.
42.	Firefighting, rescue, and safety equipment.
43.	Pumps and compressors.
44.	Furnace, steam plant, and drying equipment; and nuclear reactors.
45.	Plumbing, heating, and sanitation equipment.
46.	Water purification and sewage treatment equipment.
47.	Pipe, tubing, hose, and fittings.
48.	Valves.
49.	Maintenance and repair shop equipment.
51.	Hand tools.
52.	Measuring tools.
53.	Hardware and abrasives.
54.	Prefabricated structures and scaffolding.
55.	Lumber, millwork, plywood, and veneer.
56.	Construction and building materials.
58.	Communication equipment.
59.	Electrical and electronic equipment components.
61.	Electric wire, and power and distribution equipment.
62.	Lighting fixtures and lamps.

<i>Code</i>	<i>Description of supplies</i>
63.	Alarm and signal systems.
65.	Medical, dental, and veterinary equipment and supplies.
66.	Instruments and laboratory equipment.
67.	Photographic equipment.
68.	Chemicals and chemical products.
69.	Training aids and devices.
71.	Furniture.
72.	Household and commercial furnishings and appliances.
73.	Food preparation and serving equipment.
74.	Office machines, visible record equipment, and data processing equipment.
75.	Office supplies and devices.
76.	Books, maps, and other publications.
77.	Musical instruments, phonographs, and home-type radios.
78.	Recreational and athletic equipment.
79.	Cleaning equipment and supplies.
80.	Brushes, paints, sealers, and adhesives.
81.	Containers, packaging, and packing supplies.
83.	Textiles, leather, furs, apparel and shoe findings, tents and flags.
84.	Clothing, individual equipment, and insignia.
85.	Tolletries.
87.	Agricultural supplies.
88.	Live animals.
89.	Sustenance.
91.	Fuels, lubricants, oils, and waxes.
93.	Nonmetallic fabricated materials.
94.	Nonmetallic crude materials.
95.	Metal bars, sheets, and shapes.
96.	Ores, minerals, and their primary products.
99.	Miscellaneous.

§ 18-1.1007 Release of procurement information.

§ 18-1.1007-1 Members of Congress.

In addition to having access to that information available to members of the public, Members of Congress, upon their request, shall be given detailed information regarding any particular NASA procurement. The information given shall be responsive to the congressional request; however, where responsiveness would result in disclosure of classified matter, business confidential information, or information which would be prejudicial to competitive procurement, the proposed reply, with full documentation, will be promptly prepared and forwarded by the most expeditious means to the Assistant Administrator for Legislative Affairs, NASA Headquarters, for approval and release. (Also see § 18-3.854.)

§ 18-1.1008 Paid advertisements in newspapers and trade journals.

Use of paid advertisements for procurement purposes is not currently authorized within NASA (see § 18-2.203-3).

§ 18-1.1050 Furnishing additional procurement information to the public.

§ 18-1.1050-1 Policy.

In addition to publicizing procurements and contract awards in the Commerce Business Daily, it is NASA policy to furnish the public, upon request, through the public affairs office of the NASA installation receiving the request, information on specific current NASA procurements, including:

- (a) The names of firms invited to submit bids or proposals;

(b) The names of firms which attended preproposal briefing conferences when held; and

(c) After the date established for receipt of bids or proposals, the names of firms which submitted bids or proposals.

(d) Contract award information as required to be publicized in the Commerce Business Daily under the provisions of § 18-1.1005-1.

Exceptions to this policy will be permitted only when the Director of Procurement or the Director of the field installation concerned determines that the disclosure of such information would be prejudicial to the interests of NASA.

§ 18-1.1050-2 Procedures.

(a) Contracts requiring approval by the Director of Procurement, in accordance with Subpart 18-50.1, will not be distributed, or any information given to any source outside of NASA that the contract has been approved, until 24 hours after the Assistant Administrator for Public Affairs and the Assistant Administrator for Legislative Affairs, NASA Headquarters, have been advised that the contract has been consummated.

(b) For procurements other than those enumerated in paragraph (a) of this section, unclassified public information requested will be furnished through the Public Information Office of the NASA installation receiving the request. When press releases or public announcements are made, for procurements of \$10,000 or more, they shall include the following information:

(1) For awards after formal advertising, state that the contract was awarded after competition by formal advertising and include the number of bids solicited and the number received, and state in general terms the basis for selection, e.g., the lowest responsible bidder.

(2) For awards after procurement by negotiation, include the information contained in the notice prescribed by § 18-3.106-3(b) and where the award was made after competitive negotiation (either price or design competition), include a statement to this effect and state in general terms the basis for selection.

Subpart 18-1.12—Specifications, Plans, and Drawings

§ 18-1.1201 General.

(a) Plans, drawings, specifications, or purchase descriptions for procurements shall state only the actual minimum needs of the Government and describe the supplies and services in a manner which will encourage maximum competition and eliminate, insofar as is possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers. Items to be procured shall be described by reference to the applicable specifications or by a description containing the necessary requirements. When specifications are cited, all amendments or revisions thereof, applicable to the procurement, should be identified and the identification shall include the

dates thereof. Drawings and data furnished with solicitations shall be clear and legible.

(b) Many specifications cover several grades or types, and provide for several options in methods of inspection, etc. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection, etc., on which bids or offers are to be based.

#### § 18-1.1202 Mandatory specifications.

(a) Except as provided in paragraph (b) of this section, Federal specifications are mandatory for use by NASA in the procurement of supplies and services covered by such specifications, unless determined by NASA to be inapplicable for its use.

(b) Federal specifications need not be used for the following unless required by agency instructions:

- (1) Purchase incident to research and development;
- (2) Purchase of items for test or evaluation;
- (3) Purchase of laboratory test equipment for use by Government laboratories;
- (4) Purchase of items in an amount not to exceed \$2,500 (multiple small purchases of less than \$2,500 of the same item shall not be made for the purpose of avoiding the use of Federal specifications);
- (5) Purchase of one-time procurement items; or
- (6) Purchase of items for which it is impracticable or uneconomical to prepare a specification (repetitive use of a purchase description containing the essential characteristics of a specification will be construed as evidence of improper use of this exception).

(c) Whenever a specification is found to be inadequate, immediate action shall be taken to effect the issuance of an amendment or a revision in accordance with established procedures to obviate the necessity for repeated departures from the specification.

#### § 18-1.1203 Availability of specifications, standards, plans, and drawings.

Each solicitation shall be accompanied by the applicable specifications, standards, plans, drawings, and other pertinent documents, or shall state where such documents may be obtained or examined, in accordance with this paragraph. If the applicable specifications, standards, plans, drawings, and other pertinent documents are not furnished, the solicitation shall include a provision substantially similar to paragraph (a) or (b) of this section, as appropriate.

(a) Availability of Specifications, Standards, Plans, Drawings, and Other Pertinent Documents.

The specifications, standards, plans, drawings, and other pertinent documents cited in this Invitation for Bids/Request for Proposals may be obtained by submitting a request to:

-----  
(Installation)

-----  
(Complete address)

Requests should give the number of the Invitation for Bids/Request for Proposal, and the

title and number of the specification, standard, plan, drawing or other pertinent document requested, exactly as cited in this Invitation/Request.

(b) Availability of Specifications, Standards, Plans, Drawings, and Other Pertinent Documents.

The specifications, standards, plans, drawings, and other pertinent documents cited in this Invitation for Bids/Request for Proposals may be examined at the following locations:

-----  
(Insert complete address)

#### § 18-1.1204 Packaging requirements.

(a) Appropriate preservation, packaging, packing, and marking requirements will be included in contracts as applicable. The services of packaging technicians shall be used to the maximum extent practicable, for example, for the following purposes:

- (1) Development or establishment of preservation, packaging, packing, and marking requirements for individual procurements; and
- (2) Assistance in evaluating the reasonableness of contractors' packaging, packing, and marking cost estimates or charges.

(b) Unrealistic preservation, packaging, packing, and marking requirements should be reported and changes recommended to the activity originating the requirement and to the contracting officer.

#### § 18-1.1206 Purchase descriptions.

##### § 18-1.1206-1 General.

(a) A purchase description may be used in lieu of a specification when authorized by § 18-1.1202(b) and, subject to the restriction on repetitive use in § 18-1.1202(b)(6), where no applicable specification exists. A purchase description should set forth the essential characteristics and functions of the items or materials required. Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another company, unless it is determined that the particular feature is essential to the Government's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item. Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only as a last resort when an adequate specification or more detailed description cannot feasibly be made available in time for the procurement under consideration. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the contractor is expected to perform.

(b) The words "or equal" should not be added when it has been determined in accordance with paragraph (a) of this section that only a particular product meets the essential requirements of the Government, as, for example, (1) where the required supplies can be obtained

only from one source; or (2) procurements negotiated under § 18-3.207 for specified medicines or medical supplies where it has been determined that only a particular brand name product will meet the essential requirements of the Government.

#### § 18-1.1206-2 Brand name or equal purchase descriptions.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by § 18-1.1202(b) and in accordance with §§ 18-1.1206-3 and 18-1.1206-4. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Purchase descriptions should contain the following information to the extent available, and include such other information as is necessary to describe the item required:

- (1) Complete common generic identification of the item required;
- (2) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and
- (3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known).

(c) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

#### § 18-1.1206-3 Invitation for bids—"brand name or equal" purchase descriptions.

(a) Except as provided in paragraph (c) of this section, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

**Bidding on:**

Manufacturer's name \_\_\_\_\_  
 Brand \_\_\_\_\_ No. \_\_\_\_\_

(b) In addition, the following clause shall be included in the invitation:

**BRAND NAME OR EQUAL (JUNE 1966)**

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products will be considered for award if such products are clearly identified in the bids and are determined by the Government to be equal in all material respects to the brand name products referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

(c) (1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. Caution to Bidders. The procurement office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the procurement office to (i) determine whether the product offered meets the requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the procurement office.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(c) (1) Where component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in paragraph (b) of this section to such component parts would be impracticable, the requirements of paragraph (a) of this section shall not apply with respect to such component parts. In such cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts:

(List the component parts as to which the clause does not apply.)

(2) In the alternative, if the contracting officer determines that the clause in paragraph (b) of this section should apply to only certain such component parts, the requirements of paragraph (a) of this section shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(d) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

**§ 18-1.1206-4 Bid evaluation and award—"brand name or equal" purchase descriptions.**

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in § 18-1.1206-3(b) that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(b) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances where (1) the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item and (2) the clause in § 18-1.1206-3(b) was applicable to such component parts or accessories (see § 18-1.1206-3(c)).

**§ 18-1.1206-5 Procedure for negotiated procurements.**

(a) The policies and procedures prescribed in §§ 18-1.1206-2 through 18-1.1206-4 for formally advertised procurements shall be generally applicable to negotiated procurements.

(b) The clause in § 18-1.1206-3(b) may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered

if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

**§ 18-1.1207 Alternate articles or qualities.**

Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or qualities of material, e.g., where two or more articles will be equally acceptable to the Government depending upon relative price. However, the alternate articles or qualities must be precisely described to assure that the same degree of competition is obtainable on the alternate bids or offers as is obtained on the basic articles described.

**§ 18-1.1208 Procurement of used and reconditioned material and former Government surplus property.**

(a) Generally, all supplies or components thereof, including former Government property, purchased by NASA, shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). However, the needs of the Government may sometimes be met, and economies effected, through the purchase of items which are not new. Solicitations and the resulting contracts shall include a clause, substantially as set forth below, except when the clause would serve no useful purpose. This clause is appropriate for use not only in supply contracts, but also in service contracts which may involve an incidental furnishing of parts, such as contracts for overhaul, maintenance or repair.

**NEW MATERIAL (JUNE 1966)**

Except as to any supplies and components which the Specification or Schedule specifically provides need not be new, the Contractor represents that the supplies and components including any former Government property identified pursuant to the "Government Surplus" clause of this contract to be provided under this contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this contract, the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Government if authorization to use such supplies is granted.

(b) In all procurements in which the contracting officer has determined that supplies and components which are used or reconditioned but which fully comply with the specifications and other contract requirements are acceptable, the solicitation and resulting contract shall include provisions clearly indicating the supplies or components which need not to be new, and details concerning their acceptability. In determining whether such supplies and components may be purchased, the following criteria shall be considered:

- (1) Safety of persons or property;
- (2) Final cost to the Government (including maintenance, inspection, testing, and useful life);

(3) Performance requirements; and

(4) Availability and cost of new supplies and components (for example, out-of-production items).

(c) Items previously sold as Government surplus shall not be accepted unless it is determined that the surplus property offered fully meets the applicable specifications and other contract requirements. In addition, care must be exercised to insure that the prices paid for such items are reasonable giving due consideration to overall cost savings to the Government without affecting quality. Where a contract calls for material to be furnished at cost, the allowable charge for any Government surplus property furnished shall be the cost at which the contractor or his affiliate acquired the property.

(d) The solicitations and resulting contracts shall include a clause substantially as set forth below except when the clause would serve no useful purpose.

#### GOVERNMENT SURPLUS (JUNE 1966)

(a) In the event the bid or proposal is based on furnishing items or components which are former Government surplus property or residual inventory resulting from terminated Government contracts, a complete description of the items or components, quantity to be used, name of Government agency from which acquired, and date of acquisition shall be set forth on a separate sheet to be attached to bid or proposal. Notwithstanding any information provided in accordance with this provision, items furnished by the Contractor must comply in all respects with the specifications contained herein.

(b) Except as disclosed by the Contractor in (a) above, no property of the type described herein shall be furnished under this contract unless approved in writing by the Contracting Officer.

#### Subpart 18-1.13—Transportation

##### § 18-1.1300 Scope of subpart.

This subpart prescribes policies and procedures for the application of proper transportation and traffic management considerations in the procurement of property.

##### § 18-1.1301 General.

Proper consideration of transportation factors in awarding and administering contracts is important in order to ensure that procurements are made on the basis most advantageous to the Government, and that supplies arrive at the right place at the right time and in good condition. To this end, requiring offices should consider the mode of transportation in preparing procurement requests and should include any relevant information and instructions that will enable the procurement office to give full consideration to transportation matters. Contracting officers shall obtain advice and assistance on the transportation matters as needed for solicitations and awards and the administration, modification, and termination of contracts, including the movement of Government property to, from, and between plants of contractors and subcontractors. Such advice and assistance, including freight rates, transportation costs, time in transit, port capabilities, etc., will be obtained from the installation transportation officer,

unless other provision has been made in a delegation of contract administration services functions.

##### § 18-1.1302 Place of delivery.

The term "United States" as used in this paragraph does not include Alaska or Hawaii.

##### § 18-1.1302-1 Shipments within the United States.

Unless there are valid reasons to the contrary, the procurement of supplies from sources within the United States for ultimate delivery to destinations within the United States shall be in accordance with the following policy with respect to place of delivery:

(a) When it is estimated that all shipments under a contract will weigh less than 20,000 pounds each (less than 5,000 pounds each if air movement is contemplated) delivery shall be on the basis of f.o.b. destination (see § 18-1.1305-3); and

(b) When it is estimated that a contract will require one or more shipments of 20,000 pounds or more (5,000 pounds or more if air movement is contemplated) to any single destination, delivery shall be on the basis of f.o.b. origin or f.o.b. destination (§ 18-1.1305-2), whichever is more advantageous to the Government. Solicitations shall provide that bids or proposals may be submitted on the basis of either or both f.o.b. origin and f.o.b. destination and that they will be evaluated on the basis of the lowest overall cost to the Government.

Where sufficient reasons exist and the policy stated in paragraphs (a) and (b) above is not followed, the contract file shall be documented in accordance with § 18-1.308 to include such reasons.

##### § 18-1.1302-2 Shipments from the United States for overseas delivery.

(a) When Government procurement involves shipments from the United States overseas, delivery f.o.b. origin may afford not only the economies of lower freight rates available to the Government within the United States (see § 18-1.1309), but also flexibility for selection of the port of export and the ocean transportation providing the lowest overall cost to the Government.

(b) Unless there are valid reasons to the contrary, purchases of supplies originating within the United States for ultimate delivery to destinations outside the United States shall be made on the basis of f.o.b. origin (see § 18-1.1305-4). This policy applies to supplies and equipment to be shipped either directly to a port area for export or to a storage or holding area for subsequent forwarding to a port area for export. Justification for the solicitation of bids or proposals on other than an f.o.b. origin basis shall be recorded and the contract file documented accordingly, as required by § 18-1.308.

(c) Export cargo involves considerations of operational and cost factors from point of origin within the United States to overseas port destination. The lowest cost of shipment can be determined only by evaluating and comparing the various prospective landed costs (including in-

land, terminal, and ocean costs). NASA has certain export licensing privileges for the moving of commodities to foreign destinations. Advice should be obtained from the transportation officer in order to make full use of these privileges.

##### § 18-1.1302-3 Shipments originating outside the United States.

Procurement of supplies originating outside the United States for ultimate delivery to destinations within the United States, regardless of the quantity of the shipments, shall be on the basis of f.o.b. origin (§ 18-1.1305-4) or f.o.b. destination (§ 18-1.1305-3), whichever is more advantageous to the Government. The contracting officer will request the advice of the transportation officer in determining the most appropriate place of delivery to be specified in procurement documents, giving full consideration to the possible use of Government transportation facilities, reduced rates available, special licensing or custom requirements, and availability of American-flag shipping services between the points involved (see Subpart 18-1.14).

##### § 18-1.1303 Quantity analysis.

When additional quantities of the item being procured can be transported at no increase in transportation cost, and there would be no impairment to the program schedule, the procurement office should ascertain from the requiring office whether there is a known requirement for additional quantities.

##### § 18-1.1304 Commodity description.

A complete description of the commodity being procured, including packing and packaging instructions, shall be included in the solicitation not only to enable the supplier to bid or quote properly on the requirement but also for determination of proper transportation charges. In no case shall the manufacturer's part number be shown without the appropriate descriptive nomenclature. Dangerous and hazardous items will be clearly identified as such in the description.

##### § 18-1.1305 Delivery terms.

##### § 18-1.1305-1 General.

Solicitations for supplies shall include as much of the following information as is pertinent to the particular procurement and shall require prospective suppliers to furnish the Government such of the following as may be appropriate:

(a) Proposed method of shipment, such as rail, truck, air, or water (see § 18-1.1311);

(b) Minimum size of shipments, such as carloads, truckloads, less-than-carloads, less-than-truckloads, and, where appropriate for evaluation or other purposes, a provision substantially as set forth in § 18-2.202-3(b)(2);

(c) Guaranteed maximum shipping weights, and dimensions if applicable (if shipping weights and dimensions of items to be procured are not shown in the solicitation and could vary among prospective suppliers with a resultant variation in transportation costs, which costs are to be a factor in evaluating f.o.b.

origin bids, the schedule will provide for insertion by the suppliers of the applicable guaranteed maximum shipping weights (and dimensions, if applicable) in spaces provided after each item, or elsewhere in the schedule, and a provision substantially as set forth in § 18-2.202-3(b) (3) shall be included);

(d) Packing, crating, marking, and other preparations;

(e) Where transit privileges may apply, the information required by § 18-1.1308.

(f) Special shipping documentation requirements, safety and security requirements; and

(g) Any other shipping information required for evaluation.

**§ 18-1.1305-2 F.o.b. origin or destination.**

Solicitations for supplies which provide that bids or proposals may be submitted on the basis of either f.o.b. origin or f.o.b. destination, or both, shall include as much of the information contained in §§ 18-1.1305-4 and 18-1.1305-3 as is pertinent to the particular procurement and shall state that they will be evaluated on the basis of the lowest overall cost to the Government.

**§ 18-1.1305-3 F.o.b. destination.**

(a) Generally, solicitations for supplies to be procured f.o.b. destination shall provide that supplies and equipment shall be delivered, all transportation costs paid by the contractor, to the specific destination. The solicitation shall inform prospective suppliers of any known shortage of transportation facilities at destination or other factors which may affect the supplier's transportation costs. When only f.o.b. destination bids are desired, the invitation for bids shall specify that bids submitted on a basis other than f.o.b. destination will be rejected as nonresponsive.

(b) In contracts which provide for delivery f.o.b. destination, the contractor's responsibilities shall include:

(1) Preparation and distribution of commercial bill of lading;

(2) Delivering shipment in good order to the point of delivery specified in the contract;

(3) Responsibility for any loss or damage, or both, to the supplies prior to their receipt by the consignee at the named point of delivery;

(4) Furnishing a delivery schedule and designating mode of transportation; and

(5) Paying and bearing all charges to the point of delivery specified in the contract.

**§ 18-1.1305-4 F.O.B. origin.**

(a) Generally, solicitations for supplies to be procured f.o.b. origin shall provide for delivery f.o.b. carrier's equipment, wharf, or freight station at NASA's option, at a shipping point to be specified by the bidder or offeror at or near the contractor's or subcontractor's plant. When destinations are known, or unknown, but tentative destinations are designated (see § 18-1.1305-5), solicitations shall state that bids or proposals will be evaluated on the basis of the low-

est overall cost to the Government, taking into account transportation costs to NASA from point of origin to the designated domestic or overseas destinations. Other requirements applicable to f.o.b. origin procurements, where transit privileges may apply, are set forth in § 18-1.1308. Contracting officers should ascertain from the appropriate transportation officer the applicable transportation rates and port handling charge required for use in evaluating bids or proposals (see § 18-1.1312). When only f.o.b. origin bids are desired, the invitations for bids shall specify that bids submitted on a basis other than f.o.b. carrier's equipment, wharf, or freight stations at a specified shipping point at or near the contractor's or subcontractor's plant will be rejected as nonresponsive.

(b) In contracts which provide for delivery f.o.b. origin it shall be the responsibility of the contractor to:

(1) Pack and mark to comply with contract specifications; or, in the absence of such specifications, prepare shipment in conformance with carrier requirements to protect the personal property and assure assessment of the lowest applicable transportation charge.

(2) Order specified carrier equipment when requested by the Government; otherwise, order appropriate carrier equipment not in excess of capacity to accommodate shipment.

(3) Deliver shipments in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload (when loaded by the contractor) shipments on or in carrier's conveyance as required by carrier rules and regulations.

(4) Be responsible for any loss or damage, or both, to the personal property occurring prior to delivery of shipment to carrier; and also for any loss or damage resulting from improper packing and marking, and, when loaded by contractor, resulting from improper loading, stowing, trimming, blocking, and/or bracing of shipment on or in carrier's conveyance.

(5) Complete Government bill of lading supplied by the ordering agency; or, when Government bill of lading is not supplied, prepare commercial bill of lading or other transportation receipt. The bill of lading shall show thereon:

(i) Description of shipment in terms of the governing freight classification or tariff under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance, including number thereof, or other identification;

(iii) Length and capacity of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery and postal address of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; for example, "To be converted to a Government bill of lading," or "This shipment is the property of, and the freight charges paid

to the carrier(s) will be reimbursed by, the Government," and

(vi) Signature of carrier's agent and date shipment is received.

(6) Distribute the several parts of the bills of lading, or other transportation receipts, as directed by the ordering agency.

**§ 18-1.1305-5 Destination unknown.**

When the exact destinations of the supplies being procured are not known at the time bids or proposals are solicited, but the general location of the destination, such as East Coast, Middle West, or West Coast, is known, a definite place or places shall be designated as the point to which transportation costs will be computed—but only for the purpose of evaluating bids or proposals. The solicitations shall specify that bids or proposals should be submitted f.o.b. origin and that shipments will be made on Government bills of lading. The solicitation shall state:

For the purpose of evaluating bids or proposals, and for no other purpose, the final destination(s) for the supplies will be considered to be as follows: (The final destination(s)).

Invitations for bids shall contain a statement that bids submitted on a basis other than f.o.b. origin will be rejected as nonresponsive.

**§ 18-1.1306 Consignment and marking instructions.**

Complete consignment and marking instructions, to the extent that they are known at the time the contract is awarded, should be included in contracts to assist in ensuring that material will be delivered to the proper destinations without delay. In those cases where complete consignment information is not initially known, additional instructions to the contractor shall be furnished as soon as such information becomes known. In contracts which provide for delivery f.o.b. origin and shipment under Government bills of lading, consignment instructions may be limited to the mail address of the consignee (receiving activity), provided the contract instructions state that "Shipment other than mail shall be consigned as indicated on the Government bill of lading furnished to the contractor." Various receiving activities may have different consignment points for the various transportation media, or for particular carriers within a medium, depending on the weight, shape, size, or nature of the shipment involved.

**§ 18-1.1307 Scheduling of deliveries to permit consolidation of shipments.**

The accumulation of small shipments into carload or truckload lots will result in lower transportation costs. Even the accumulation of small shipments into less than full-load shipments may result in lower transportation costs. Upon review of the procurement request, and in conjunction with the requiring or requisitioning activity, consideration shall be given to the revision of delivery schedules (when feasible) to provide for deliveries in larger quantities. In some

cases, delivery schedules for supplies and equipment to multiple destinations can be consolidated and the stop-off-in-transit privilege used for partial unloading at one or more points directly en route between the point of origin and the last destination point without jeopardizing the delivery date at destination.

**§ 18-1.1308 Transit privileges.**

(a) Transit privileges afford an opportunity to stop carload or truckload shipments at specific intermediate points en route to the final destination in order to store, process, or fabricate, or for other purposes as specified in carriers' applicable tariffs. A single through rate from origin to final destination, plus a transit or other related charge, if applicable, is charged in lieu of a combination of rates to and from the transit point which would result in higher costs. Consideration should be given to possible benefits to the Government through the use of such transit arrangements. Transportation officers can furnish the necessary information and analysis of situations where such transit arrangements may be beneficial.

(b) When it is considered that transit privileges may be applicable and advantageous to the Government, solicitations shall include a statement that any applicable transit privileges will be considered in the evaluation of bids and proposals for purposes of determining the lowest overall cost to the Government.

(c) If it is the intent of the Government that supplies delivered f.o.b. origin be shipped in carload quantities to an intermediate point for storage or other purpose specified in carrier's applicable tariffs and later shipped in carload quantities to final destination and both the first destination (intermediate point) and the final destination are reasonably firm, both destinations shall be named in the solicitation. In such cases the solicitation also shall state that bids or proposals will be evaluated on the basis of the lowest overall cost to the Government, including transportation costs to NASA from point of origin to final destination, taking into account any applicable transit privileges.

(d) If the nature of the procurement is such that carload or truckload shipments may be made by the contractor from one point (such as a subcontractor's plant) to another point for processing or fabrication and delivery to the Government, solicitations shall provide for the furnishing of such information by the bidder or contractor as will enable the Government to benefit from any transit privilege that might apply in shipment to final destination. Such solicitations will also include the statement described in paragraph (b) of this section.

**§ 18-1.1309 Volume movements within the United States.**

(a) A volume movement is the aggregate of one or more freight shipments totaling 200,000 pounds or more, which is to move during the contract period, from one point of origin to one point of destination.

(b) Contracting officers and contract administrators shall, after contract award and as soon as performance schedules and planned destinations have been established, refer a copy of all contracts which will generate volume movements to the transportation officer serving the procuring activity. The installation transportation officer will review the contracts and advise the Director, Transportation and Logistics Division, NASA Headquarters (Code BL) of such volume movements.

(c) Reporting of volume movements will permit a determination of the reasonableness of applicable current rates and, when appropriate, negotiation of adjusted or modified rates in accordance with NASA Management Instruction 6120.1, "Loss and Damage in Transit and Misdelivery of Freight from Commercial Carriers". Government traffic frequently possesses more favorable transportation characteristics (greater volume, heavier loading, less likelihood of damage, etc.) than commercial traffic and may therefore be susceptible to special rate adjustments under provisions of section 22 of the Interstate Commerce Act (see § 18-1.1313).

**§ 18-1.1310 Shipments requiring special handling.**

The transportation officer should be consulted prior to the procurement of items which may require special handling because of unusual size, weight, shape, or other reasons in order that any transportation problems may be considered. These transportation problems may create additional costs, such as the use of special equipment, blocking and bracing, circuitous routing, route modification, special facilities construction, etc., and may all be a part of the total transportation costs, in conjunction with the freight rate.

**§ 18-1.1311 Mode of transportation.**

Preferential treatment shall not be accorded to any mode of transportation of any particular carrier. However, where, for valid reasons, use of particular types of carriers is necessary to meet program requirements, solicitations shall provide that only bids or proposals involving the specified types of carriers will be considered. Generally, the transportation officer of the installation is the proper authority to specify the mode and routing of shipments. The transportation officer should be advised of any urgency for the material so that the appropriate means of transportation may be selected.

**§ 18-1.1312 Transportation rates and related costs.**

**§ 18-1.1312-1 Use in evaluation of bids and proposals.**

In the evaluation of f.o.b. origin bids and proposals the contracting officer should consider the best available transportation rates and related costs. Those in effect or to become effective prior to the expected date of initial shipment and on file or published at the date of the bid opening shall be used. Transportation rates and related costs filed or pub-

lished after the bid opening, or the date proposals are due, shall not be used in the evaluation unless they cover traffic for which no applicable transportation rate or related cost was in existence on the bid opening or the date proposals were due.

**§ 18-1.1312-2 Source of transportation rates and related costs.**

Contracting officers should obtain transportation and traffic management advice covering freight rates, transportation costs, transit times, and other transportation factors and guidance from the transportation officer serving the NASA installation. Requests for such information shall include the bid opening or proposal due date and the expected date of initial shipment, if established.

**§ 18-1.1313 Section 22 of the Interstate Commerce Act.**

**§ 18-1.1313-1 General.**

Section 22 of the Interstate Commerce Act (49 U.S.C. 22) grants commercial carriers the privilege of offering reduced transportation rates to the Government. In appropriate situations NASA will seek to obtain such reduced rates rather than pay the published tariff. These rates are often referred to as "Section 22 quotations." NASA policy in this matter and the respective responsibilities of the Director of Transportation and Logistics, NASA Headquarters, and installation transportation officers are set forth in NASA Management Instruction 6120.1. The contracting officer should request advice and assistance from the installation transportation officer in the application of this policy. In general, section 22 quotations may be considered appropriate in the following situations:

(a) When volume movements (as defined in § 18-1.1309(a)) are expected;

(b) When shipments will be made on a recurring basis between designated points and substantial savings in transportation costs appear possible even though a volume movement is not involved;

(c) When a current rate charge or freight classification is considered unreasonable or improper; and

(d) When transit arrangements (as described in § 18-1.1308) are feasible and advantageous.

In some cases the carrier may voluntarily offer reduced rates which are considered acceptable. In other cases NASA may seek to negotiate with the carrier for reduced rates. Installation transportation officers and the Director of Transportation and Logistics, NASA Headquarters, are responsible for evaluating and/or negotiating rates under section 22. It is not intended that NASA contractors conduct such negotiations with commercial carriers.

**§ 18-1.1313-2 Application to commercial bills of lading.**

(a) *Cost-reimbursement type contracts.* Reduced transportation rates accorded the Government under section 22 of the Interstate Commerce Act will be applied to commercial bills of lading,

where applicable, covering property moving under cost-reimbursement type Government contracts when the contract provides for direct reimbursement by the Government of all transportation costs and such costs are allowable in accordance with Part 15 of this regulation. To properly identify shipments under commercial bills of lading to which such reduced rates apply, the following statement shall be placed on the bill of lading:

Transportation hereunder is for the National Aeronautics and Space Administration and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable Contract No. .... This may be confirmed by contacting such agency at .....

(b) **Fixed-price contracts.** Section 22 quotations do not apply under fixed-price contracts awarded on f.o.b. destination basis (delivered price). Inadvertent or erroneous use of section 22 rates by contractors or carriers under such conditions could lead to profits to contracts not contemplated by, or accruing to, the Government.

**§ 18-1.1313-3 Application to household goods.**

Section 22 quotations will apply, where applicable, on the movement of household goods and personal effects when the relocation of contractor employees is for the convenience of and at the direction of the Government and the total transportation costs are to be reimbursed by the Government. When such reduced rates are applicable:

(a) Contracting officers will ensure:

(1) That contract provisions require the contractor to utilize carriers offering acceptable service with application of reduced rates; and

(2) That affected contractors are provided adequate instructions on the household goods program and the name and location of the transportation officer designated to furnish support and guidance.

(b) Transportation officers will:

(1) Provide transportation advice and assistance to contracting officers and affected contractors for shipment of household goods; and

(2) Furnish affected contractors a list of carriers (by place of origin) providing service under special quotations, cite applicable tariffs, and advise them of the statement to be shown on carriers' commercial bill of lading.

**§ 18-1.1313-4 Penalty.**

It is a criminal offense under section 22(C) of the Interstate Commerce Act for any contractor to issue false statements for the purpose of obtaining special rates from which the contractor would solely benefit.

**§ 18-1.1314 Insurance.**

(a) Normally, the Government does not procure insurance but is a selfinsurer of its property while in possession of commercial carriers and, except for the legal liability of the carrier, assumes the risk of loss. However, insurance will be required when it is mandatory by law. In special instances, the Government may,

if deemed necessary and desirable and in the best interest of the Government, (1) procure insurance on its property when there is no statutory prohibition, or (2) require the carrier under the contract to assume full responsibility for loss or damage to the Government property in its possession and to provide insurance to cover the carrier's assumed responsibility.

(b) When special considerations dictate the need for insurance and it is proposed that the Government directly procure insurance coverage for its benefit, the contracting officer shall ascertain that there is no statutory prohibition and that funds are available therefore and shall document the need and authorization.

(c) When a commercial carrier is required to assume full responsibility for in its possession, and the carrier is required to provide appropriate insurance to cover its assumed responsibility, the cost of such insurance to the carrier shall be included in and properly considered a part of the transportation cost.

**§ 18-1.1315 Loss and damage in transit.**

Contracting officers, property administrators, contractors, and transportation officers shall be responsible for reporting and adjusting claims for loss and damage of Government property in transit pursuant to the provisions of NASA Management Instruction 6220.1.

**§ 18-1.1316 Prepaid transportation charges.**

(a) Contracts for delivery f.o.b. origin will normally provide for transportation on Government bills of lading. However, contracts for delivery f.o.b. origin may provide for transportation on commercial bills of lading to domestic destinations, in accordance with the provisions set forth in this section.

(b) The contracting officer may authorize the contractor to prepay the transportation charges, provided the cost of such transportation charges does not exceed \$25. The actual cost of transportation charges, not to exceed \$25 per shipment, will be added to contractor's invoice as a separate item. All transportation charges which are added to the contractor's invoice shall be supported by paid freight, express, or parcel post receipts. If paid receipts in support of the invoice are not obtainable, the contractor shall insert the following certificate on his invoice:

I certify that the shipments identified below have been made and transportation charges related thereto have been paid by me and that paid freight, express, or parcel post receipts in support thereof are not obtainable:

Destination .....

Name of Carrier(s) .....

Weight of Shipment .....

Transportation Charges Claimed .....

Insurance and registry fees will not be allowed unless specifically authorized. This procedure will be used only for shipments of unclassified items to domestic destinations.

(c) The authority provided in paragraph (b) of this section may also

be used to authorize the contractor to prepay transportation charges under a contract originally calling for transportation on a Government bill of lading. In such case, amendment of the contract is not required.

(d) Property transported pursuant to paragraph (b) of this section becomes Government property when loaded on the carrier's equipment, unless otherwise provided in the contract. Once the property becomes Government property, the risk of loss thereof and damage thereto is assumed by the Government, and loss or damage claims will be the responsibility of the Government.

(e) The policy governing the use of official Government mailing privileges by NASA contractors is set forth in NASA Management Instruction 1530.1A, "Official Mailings: Authorization for Contractors and Annual Reporting Requirements — NASA and NASA Contractors."

**§ 18-1.1350 Charter of aircraft.**

See NASA Management Instruction 6550.1, "Acquisition and Management of NASA Controlled Aircraft."

**Subpart 18-1.14—Transportation by Ocean Carriers**

**§ 18-1.1400 Scope.**

This subpart sets forth policy and procedures (a) providing preference for private U.S. vessels as ocean carriers, in accordance with the requirements of the Cargo Preference Act, and (b) providing for nonuse of foreign-flag vessels that have engaged in trade with Cuba or North Vietnam.

**§ 18-1.1401 Definitions.**

(a) "Dry bulk carriers" are irregularly scheduled vessels for the carriage of full cargo offers. Cargoes under this category include grain, coal, lumber, pitch, salt, sugar, etc.

(b) "Dry cargo liners" are vessels more or less scheduled in specific trade routes and used for the carriage of heterogeneous marked cargoes in parcel lots, including part cargoes of such bulk as grain, coal, sugar, etc. Petroleum, vegetable oils, and similar bulk liquids can be carried in dry cargo liners which are equipped with deep tanks.

(c) "Tankers" are vessels used for the carriage of bulk liquid commodities, such as liquid petroleum products, molasses, vegetable oils, etc.

(d) "Government vessels" are (1) those vessels owned by the U.S. Government and operated directly by the Government or for the Government by an agent or contractor, and (2) those privately owned U.S.-flag vessels under bareboat charter (without crews and maintenance) to the Government.

(e) "Foreign-flag vessels" are vessels of foreign registry, including vessels owned by U.S. citizens but registered in a nation other than the United States.

(f) "Private U.S. vessels." The term "private U.S. vessel" applies to the following vessels documented under U.S.-flag registry, except as otherwise provided by the Cargo Preference Act quoted below:

- (1) Privately owned and operated;
- (2) Privately owned and time-chartered or voyage-chartered (but not bareboat-chartered) to the Government; and
- (3) Government-owned and bareboat-chartered (without crews and maintenance) to private operators.

(g) "U.S.-flag vessels" when used independently means both Government vessels and private U.S. vessels. The Cargo Preference Act states in part: "the term privately owned U.S.-flag commercial vessels shall not be deemed to include any vessel which, subsequent to September 21, 1961, shall have been either (1) built outside the United States, (2) rebuilt outside the United States, or (3) documented under any foreign registry, until such vessels shall have been documented under the laws of the United States for a period of 3 years: *Provided, however,* That the provisions of this amendment shall not apply where (i) prior to September 21, 1961, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than 1 year subsequent to September 21, 1961, or (ii) where prior to September 21, 1961, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than 1 year subsequent to September 21, 1961 \* \* \*"

**§ 18-1.1402 Preference for private U.S. vessels.**

**§ 18-1.1402-1 Policy.**

(a) The Cargo Preference Act (68 Stat. 832, as amended by 75 Stat. 565; 46 U.S.C. 1241(b)) establishes a policy of preference for private U.S. vessels as follows: "Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credit or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates

for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas \* \* \*"

(b) In complying with the policy stated in paragraph (a) of this section, shipments of at least 50 percent of all ocean tonnage during each fiscal year will be made on private U.S. vessels without deduction of any tonnage which may be made the subject of a waiver or exclusion by reason of the unavailability of private U.S. vessels at fair and reasonable rates and which tonnage might otherwise be treated as a deduction from aggregate tonnage.

(c) The provisions of this Subpart 18-1.14 are intended to encourage the use of the American merchant marine and application of the 50 percent requirement shall not prevent the use of private U.S. vessels for carriage of up to 100 percent of U.S. Government cargo when price differentials are not involved.

(d) For purposes of compliance with the policy stated in paragraph (a) of this section, the term "geographic area" shall mean one of the following areas from which the shipment originates:

- (1) United States.
- (2) Europe and Africa.
- (3) Near East and South Asia.
- (4) Latin America and Canada.
- (5) Far East, including Oceania.

(e) This policy shall apply not only to supplies owned by the Government, which may be in the possession of either the Government or a contractor or subcontractor (of any tier), but also to supplies not owned by the Government at the time of shipment but which are for use of the Government, contracted for, and requiring subsequent delivery to NASA.

(f) Opportunities shall be afforded to all categories of vessels to participate in carrying cargo to be shipped in accordance with this policy.

**§ 18-1.1402-2 Shipments to which policy is not applicable.**

By reason of statutory exemptions or requirements, the policies set forth in this Subpart 18-1.14 do not cover the following types of ocean shipments:

(a) Shipments aboard vessels of the Panama Canal Company (Cargo Preference Act).

(b) Shipments of supplies involving ocean transportation between foreign countries when supplies are procured with local currency funds made available, or derived from funds made available, in the Act of September 4, 1961, Public Law 87-195; 75 Stat. 424.

(c) Shipments falling within the purview of Public Res. 17, 73d Congress, 48 Stat. 500, as amended (15 U.S.C. 616a), relating to certain loans to foster export of agriculture or other products.

(d) Shipments of fresh fruit and the products thereof under title I of the Act of July 10, 1954, 68 Stat. 455, as amended, 7 U.S.C., 1701-1709 (sales of surplus agriculture commodities for foreign currencies) (sec. 3, Act of Aug. 3, 1956, 70 Stat. 988).

(e) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Shipments which originate or terminate in the following exempt areas:

- (1) Alaska north of Cape Prince of Wales.
- (2) Greenland, except Narsarsuaq.
- (3) Northern and Eastern Canada from Goose Bay, Labrador to Alaska.
- (4) Ports and facilities under security restrictions in otherwise nonexempt areas.
- (5) Antarctica.

(g) Other exceptions established by law.

**§ 18-1.1402-3 Procedures.**

(a) In each procurement which may involve the ocean transportation of supplies subject to the requirements of the Cargo Preference Act, the contracting officer shall obtain assistance from the transportation officer of the field installation in developing appropriate shipping instructions and delivery terms for inclusion in the invitations for bids or requests for proposals.

(b) Contract clause: All contracts which may involve the ocean transportation of supplies subject to the requirements of the Cargo Preference Act shall contain the following clause except where the ocean transportation will be procured by the Government:

**PREFERENCE FOR U.S.-FLAG VESSELS  
(MARCH 1969)**

(a) After the date of award of this contract, the Contractor shall use U.S.-flag services, and no others, in the overseas transportation by ocean of any supplies to be furnished hereunder: *Provided, however,* That if such services are not available for timely shipment at fair and reasonable rates, the Contractor shall so notify the Contracting Officer and request authorization in writing to ship by foreign-flag ocean carriers or for designation of available U.S.-flag services. The contract price shall be equitably adjusted to reflect the difference in cost to the Contractor, if any, between shipping by U.S.-flag services and by foreign-flag services.

(b) Promptly after each shipment the contractor will furnish the Contracting Officer one copy of the applicable shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet equals 1 measurement ton) of dry cargo, or long tons (2,240 pounds equals 1 long ton) of bulk liquid cargo shipped on such vessels.

(c) In the event of notification by the contractor in accordance with the clause set forth in paragraph (b) of this section that a private U.S. vessel is not available, the contracting officer will seek assistance from the transportation officer of the field installation.

(d) For purposes of determining the availability of private U.S. vessels at fair and reasonable rates, rates filed and published in accordance with the requirements of the Federal Maritime Commission shall be accepted as fair and reasonable. When applicable rates are not named in published tariffs, a determination as to whether the rates are fair and reasonable shall be obtained from the U.S. Maritime Administration.

(e) If shipment by foreign-flag commercial vessel is authorized by the contracting officer in accordance with the clause set forth in paragraph (b) of this section, the contracting officer shall insure that, where appropriate, the contract price is equitably adjusted.

(f) A register will be established and maintained by the transportation officer in each field installation to reflect adherence to the Cargo Preference Act. Where there is no transportation officer available, it will be maintained by the procurement office. Such registers shall contain pertinent details of ocean shipments, including, but not limited to, the countries of origin and destination of shipments, commodity descriptions, and gross weight maintained separately by category of vessel (dry bulk carrier, dry cargo liner, and tanker). Registers shall be maintained on a current basis and organized so that adherence to the Cargo

Preference Act can be ascertained at all times. Insofar as practicable, compliance with the 50 percent minimum requirements of the Cargo Preference Act shall be maintained on a quarter-year basis. Any deficiencies to maintain such compliance shall be corrected by the end of the fiscal year.

(g) On the basis of the registers maintained in accordance with paragraph (f) of this section, reports reflecting actual ocean shipments (except any shipments via the Military Sea Transportation Service) shall be submitted to the Operating Agreements and Traffic Division, Maritime Commission, Department of Commerce, Washington, D.C. 20235, on a quarterly basis. Such report will be made by the transportation officers and contracting officers responsible for maintaining the registers described in paragraph (f) of this section. The format to be used is set forth below:

REPORT OF CARRIAGE OF NASA CARGO FOR THE QUARTER ..... TO .....

Carrier: ( ) Dry bulk, in L/T; ( ) Dry cargo liner, in M/T ( ) Tanker in L/T

From <sup>1</sup>	To <sup>1</sup>	Total	Private U.S. vessels	Government vessels	Foreign flag vessels	
			Used due to nonavailability of private U.S. vessels.	Other	Used due to nonavailability of private U.S. vessels.	Other

<sup>1</sup> Identify by Roman numeral corresponding to geographic areas listed in 1.1402-1(d).

**§ 18-1.1410 Nonuse of foreign-flag vessels engaged in Cuban and North Vietnam trade.**

(a) Supplies owned by or procured under any contract of NASA will not be shipped from any U.S. port on a foreign-flag vessel which has called at a Cuban port on or after January 1, 1963, or a North Vietnam port on or after January 25, 1966, unless the Secretary of Commerce has made an exception applicable to such vessel. For the purpose of this paragraph 18-1.1410, the term "United States" includes the 50 States, Puerto Rico, possessions of the United States, and the District of Columbia.

(b) Contracting-officers shall include the following clause in any contract which may involve the use of foreign-flag vessels in the ocean transportation from a U.S. port of supplies to be delivered under the contract or to be incorporated in supplies or other end product of the contract:

**NONUSE OF FOREIGN-FLAG VESSELS ENGAGED IN CUBAN AND NORTH VIETNAM TRADE (JUNE 1966)**

(a) If, after the date of award, any supplies to be furnished or any materials to be incorporated in such supplies or in a construction project will require ocean transportation from the United States in the performance of this contract, the Contractor shall not use any foreign-flag vessel which the Maritime Commission has listed in the FEDERAL REGISTER as having called at a Cuban port on or after January 1, 1963, or a North Vietnam port on or after January 25, 1966, unless an exception has been made by the Secretary of Commerce.

(b) For purposes of this clause, the term "United States" includes the 50 States, Puerto Rico, possessions of the United States, and the District of Columbia.

(c) The Contractor shall include the substance of this clause, including this paragraph (c) in each subcontract or purchase order hereunder which may involve ocean transportation from the United States.

(c) The contracting officer may refer any questions in connection with the above clause to the Military Sea Transportation Service, Washington, D.C. 20390.

**Subpart 18-1.15—Options**

**§ 18-1.1500 Scope of subpart.**

This subpart applies to contracts for supplies and services other than for (a) the construction, alterations, or repair of buildings, bridges, roads, or other kinds of real property, and (b) research and development. It does not preclude the use of appropriate option provisions in such construction and research and development contracts.

**§ 18-1.1501 Definition of option.**

As used in this Part 18-1, an option is a provision in a contract under which, for a specified time, the Government may elect to purchase, at an established price or at a price that can be established by reference to some specific method of calculation which will make the price certain, additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

**§ 18-1.1502 Applicability.**

(a) Option clauses may be included in contracts where increased requirements within the period of contract performance are foreseeable, or where continuing performance beyond the original period of contract performance may be in the best interest of the Government. Since

options require offerors to guarantee prices for definite periods of time with no guarantee that orders will be placed, their improper use could result in prices which are unfair to either the Government or the contractor. Option clauses may require that option quantities be offered at prices no higher than those for the initial quantities or they may allow option quantities to be offered without such limitation as to price. When additional requirements are foreseeable and subsequent competition would be impracticable because of such factors as production lead time and delivery requirements, the use of options which require prices no higher than those for the initial quantities may be preferable to later negotiating a price with the contractor (in lieu of exercising such an option) at a time when he is the only practical source. An option normally should not be used where it can reasonably be foreseen that (1) supplies will have to be procured at some future date in such a quantity that would constitute an economic production run, and (2) startup costs, production lead time, and probable delivery requirements would not preclude adequate future competition.

(b) Option provisions and clauses shall not be included in contracts when—

(1) The supplies or services being purchased are readily available on the open market;

(2) The contractor would be required to incur undue risks: E.g., the price or availability of necessary materials or labor is not reasonably foreseeable;

(3) An indefinite quantity contract or requirements contract is appropriate except that options for continuing performance may be used in such contracts;

(4) Market prices for the supplies or services involved are likely to change substantially; or

(5) The option quantities represent known firm requirements for which procurement funds are available.

**§ 18-1.1503 Procedures.**

(a) When a contract is to contain an option clause, the solicitation must contain an appropriate option provision. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended, under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (1) necessary lead time in order to assure

to assure continuous production and (2) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. When a solicitation contains an option which requires the offering of additional quantities of supplies at unit prices no higher than those for the initial quantities, it shall provide that the option quantities shall not exceed 50 percent of the initial quantity. When unusual circumstances exist, however, the Procurement Officer or his designee may approve a greater percentage or quantity. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file.

(b) Solicitations containing option provisions generally shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity. However, where it is anticipated that the Government may elect to exercise the option at time of award, solicitations shall state that if the Government does so elect, evaluation will be on the basis of total quantity to be awarded, including the option quantity, but if the Government does not so elect, evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(c) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered.

(d) Where exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (1) percentage of specific contract line items, (2) a number of additional units of specific contract line items, or (3) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. Where exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. Where exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

#### § 18-1.1504 Exercise of options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) Where the contract provides for price escalation and the contractor requests revision of price pursuant to such provision, or the provision applies only to the option quantity, the effect of escalation on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that—

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing need of the Government; and
- (3) The exercise of the option is most advantageous to the Government, price and other factors considered.

(d) Insofar as price is concerned, the determination under paragraph (c)(3) of this section shall be made on the basis of one of the following:

(1) A new solicitation fails to produce a better price than that offered by the option. When the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in subparagraph (2), (3), or (4) of this paragraph (see § 18-1.309).

(2) An informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the usual duration of contracts for such supplies and services.

(4) Established prices are readily ascertainable and clearly indicate that formal advertising or informal solicitation can obviously serve no useful purpose.

(e) Insofar as the "other factors" mentioned in paragraph (c)(3) of this section are concerned, the determination should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government furnished equipment (as, for example, in certain repair and overhaul contracts for complex equipment).

(f) When it has been determined that an option may properly be exercised in accordance with the principles set forth herein, such determination shall be set forth in writing and made a part of the contract file. Written notification to the contractor of the exercise of the option and any contract modification resulting therefrom shall cite the option clause contained in the original contract as authority for the procurement of the option quantity; and no citation under 10 U.S.C. 2304(a) is required. Reporting, however, shall be in accordance with the instructions applicable to NASA Form 507 (Individual Procurement Action Report) (see § 18-16.901).

#### § 18-1.1505 Examples of option clause.

(a) A clause substantially as follows may be used where the contract expresses the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

##### OPTION FOR INCREASED QUANTITY (FEBRUARY 1965)

The Government may increase the quantity of supplies called for herein by the amount stated in the Schedule and at the unit price specified therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(b) A clause substantially as follows may be used where the contract identifies the option quantity as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

##### OPTION FOR INCREASED QUANTITY-LINE ITEM (FEBRUARY 1965)

The Government may increase the quantity of supplies called for herein by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity, and at the price set forth therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(c) A clause substantially as follows may be used where it is intended to extend the services described in the schedule.

##### OPTION TO EXTEND SERVICES (FEBRUARY 1966)

The Government may require the Contractor to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. The rates set forth in the Schedule shall apply to any extension made pursuant to this option provision.

(d) A clause substantially as follows may be used to provide for continuing performance of the contract beyond its original term.

##### OPTION TO EXTEND THE TERM OF THE CONTRACT (FEBRUARY 1965)

This contract is renewable, at the option of the Government, by the Contracting officer giving written notice of renewal to the Contractor within the period specified in the Schedule: *Provided*, That the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewals.) If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this

contract, including the exercise of any options under this clause, shall not exceed \_\_\_\_\_ years.

**Subpart 18-1.50—Integration of Quality Requirements in NASA Procurements**

**§ 18-1.5000 Scope of subpart.**

This subpart sets forth procurement procedures for implementing the quality assurance policies of NASA Policy Directive 5300.7, "Basic Policy for Reliability and Quality Assurance", and detailing the application of the following NASA Reliability and Quality Assurance Publications:

(a) "Quality Program Provisions For Aeronautical and Space System Contractors" (NHB 5300.4(1B));

(b) "Inspection System Provisions for Suppliers of Space Materials, Parts, Components, and Services" (NPC 200-3); and

(c) "Requirements for Soldered Electrical Connections" (NHB 5300.4(3A)).

**§ 18-1.5001 Policy.**

(a) Quality is a factor for consideration in each step of the program development, project planning and procurement process. The inclusion of realistic quality requirements in procurements and the appropriate technical application of NASA Reliability and Quality Assurance publications are essential to accomplish NASA mission objectives.

(b) Personnel responsible for quality assurance shall prepare quality requirements for each procurement, invoking NASA Reliability and Quality Assurance publications to the extent needed and consistent with program and project planning.

(c) Quality requirements shall be definitized and included in the procurement documents as early as possible.

(d) The contractor's NASA-approved Quality Program Plan for Category 1 procurements (§ 18-1.5002(a)) shall be included or incorporated by reference in the contract at time of award, whenever practicable.

**§ 18-1.5002 Categories of procurements and their quality requirements.**

For purposes of determining quality requirements, NASA procurements are categorized as set forth in this section.

(a) *Category 1 procurements.* Procurements for design, development, fabrication, test or operation of: aeronautical and space systems; major subsystems; complex assemblies; support equipment used in launching, operating, or maintaining vehicles or spacecraft in flight, or used for static test; test and checkout equipment; and related services.

(1) *Quality requirements.* The applicable provisions of NHB 5300.4(1B), and other applicable quality requirements, data and information shall be invoked in Category 1 procurements. Any details

necessary to amplify the provisions of NHB 5300.4(1B) invoked in Category 1 procurements shall be set forth in the procurement request, solicitation and resulting contract. Typical examples of such details are as follows:

<i>NHB 5300.4(1B) paragraph number</i>	<i>Description of action</i>
1B102-2 -----	<i>Designated Government quality representatives.</i> Specify in the contract that a designated Government quality representative will be assigned.
1B103-1 -----	<i>Quality program documents.</i> Specify those documents listed in Appendix A of NHB 5300.4(1B) that the contractor shall generate and the detailed submission requirements, e.g., their classification as to approval, review, or information; to whom they will be submitted; who will take the specified Government action; the time for submission; and distribution quantity.
1B202-2 -----	<i>Certification of personnel.</i> Specify appropriate process specifications and those processes and operations for which the contractor shall train and certify personnel.
1B203 -----	<i>Quality information.</i> Specify details or special requirements for quality information.
1B204 -----	<i>Quality status reporting.</i> Specify the desired details of reporting, e.g., contents of written reports and meetings.
1B205-1 -----	<i>Quality program audits.</i> Specify the frequency of audits. Also, relate audits to selected milestones or events.
1B206-1 -----	<i>Quality program plan.</i> Specify detailed requirements for submission of the quality program plan. In all cases, a plan shall be required to be submitted with the contractor's proposal and shall include those details which can be provided at the current stage of the procurement process. Specify requirements for updating of the plan during the period of contract performance.
1B206-3 -----	<i>Site plans.</i> Specify requirements for remote test and launch site quality program plans.
1B401 -----	<i>Identification methods.</i> Specify detailed identification requirements for each generic hardware category.
1B502-2a(1) -----	<i>Subcontracts for systems, subsystems, and related services.</i> Specify detailed requirements for quality programs for subcontractors/suppliers.
1B502-2a(2) -----	<i>Other suppliers.</i> Specify General and detailed quality program or inspection system requirements for all other suppliers.
1B508 -----	<i>Postaward survey of supplier operations.</i> Specify detailed requirements.
1B602 -----	<i>Cleanliness control.</i> Specify applicable cleanliness requirements or specifications.
1B603 -----	<i>Process controls.</i> Specify applicable process, nondestructive testing and material treatment requirements or specifications.
1B701 -----	<i>Inspection and test planning.</i> Specify desired details of planning and documentation system.
1B706-2 -----	<i>Equipment records.</i> Specify equipment for which records are to be prepared.
1B1102-2 -----	<i>Documentation package.</i> Specify specific documents to be included for each shipment.
1B1300-5 -----	<i>Government property control.</i> Specify functional test requirements or specify when they will be provided by NASA.

(b) *Category 2 procurements.* Procurements for materials, parts, components, and services; instrumentation; and ground support equipment not included in Category 1.

(1) *Quality requirements.* The applicable provisions of NPC 200-3 and other applicable quality requirements, data and information shall be invoked in Category 2 procurements. Any details necessary to amplify the provisions of NPC 200-3 invoked in Category 2 procurements shall be set forth in the procurement request, solicitation and resulting contract. Typical examples of such details are as follows:

<i>NPC 200-3 paragraph number</i>	<i>Description of action</i>
1.5 -----	<i>Government inspection actions.</i> Specify in the contract that a designated Government quality representative will be assigned.
2.2 -----	<i>Preparation and submission of supplier's inspection plan.</i> If submission of an inspection plan is desired, specify details for submission, contents of plan, and requirements for updating of the plan.
2.3, 3.6 -----	<i>Records, reports, procedures.</i> Specify those documents that the contractor shall generate and the detailed submission requirements, e.g., their classification as to approval, review, or information; to whom they will be submitted; who will take the specified Government action; the time for submission; and distribution quantity.

- NPC 200-3**  
paragraph number
- Description of action.**
- 3.2----- **Government source inspection requirements.** Replace the existing Government source inspection requirements of NPC 200-3 with the following:  
 "When the Government elects to perform inspection at a supplier's plant, the following statement shall be included in the procurement document:  
 "All work on this order is subject to inspection and test by the Government at any time and place. The Government quality representative who has been delegated NASA Quality Assurance functions on this procurement shall be notified immediately upon receipt of this order. The Government shall also be notified forty-eight (48) hours in advance of the time articles or materials are ready for inspection or test." Procurements which do not require Government source inspection shall include the following statement:  
 "The Government has the right to inspect any or all of the work included in this order at the supplier's plant."
- 3.4----- **Identification, handling and storage of material.** Specify requirements for identification, handling, and storage.
- 3.5----- **Control of raw materials.** Specify requirements for submission of chemical and physical test results and/or test specimens.
- 3.6----- **Inspections and tests.** Specify inspection and test requirements not contained in referenced specifications and standards.

## GENERAL PROVISIONS

- 3.7----- **Process control.** Specify applicable process, nondestructive testing and material treatment requirements or specifications.
- 3.11----- **Preservation, packaging, packing, and shipping.** Specify preservation, packaging, and shipping requirements.
- 3.13----- **Records of inspections and tests.** Specify desired format and content of records.
- 3.14----- **Corrective action.** Specify requirements for documenting deficiencies, analyses, and related corrective actions.

(c) **Additional quality requirements for category 1 and 2 procurements.** (1) Specify NHB 5300.4(3A), or applicable portions thereof when the contractor is to perform soldering of electrical connections.

(2) Specify the applicable specifications, quality standards, design quality criteria, and other documents, which definitize quality requirements; also specify the required or applicable contract clauses as established in Part 18-7 of this chapter.

**§ 18-1.5003 Responsibilities of NASA personnel.**

(a) **Originators of procurement requests.** At the earliest possible time, originators or procurement requests shall insure that personnel responsible for quality assurance develop detailed quality requirements in accordance with paragraph § 18-1.5002.

(b) **Personnel responsible for quality assurance.** Personnel responsible for quality assurance shall support, as appropriate, originators of procurement request and contracting officers by:

- (1) Participating in each phase of project planning and each step of the procurement process;
- (2) Determining and documenting the necessary quality requirements;
- (3) Documenting funding estimates required to implement the quality requirements of the procurement request;
- (4) Participating in preaward and postaward surveys;
- (5) Reviewing Quality Program Plans or Inspection Plans for adequacy and coordinating reviews with originators of procurement requests;
- (6) Presenting quality requirements at bidder's conferences or oral briefings;

(7) Participating in proposal or bid evaluations;

(8) Providing technical support in negotiation of quality requirements into contracts;

(9) Reviewing contracts prior to issuance to ensure inclusion of appropriate quality requirements;

(10) Evaluating contractor efforts after award of contract; and

(11) Preparing the quality assurance requirements for inclusion in the Letters of Delegation for performance of contract administration services by other Government agencies.

(c) **Contracting officers.** The contracting officer, with or through personnel responsible for quality assurance, shall:

(1) Review each procurement document to ensure that quality requirements are included, as necessary;

(2) Determine, if quality requirements have been omitted or appear to be inadequate, the applicable quality requirements by consultation and verification with personnel responsible for quality assurance and the originator of the procurement request;

(3) Advise all prospective contractors of the quality requirements for the particular procurement;

(4) Include a statement, when NASA quality documents are referenced in the RFP or IFB, that if copies of the documents are unavailable for the preparation of the proposal or bid, they will be furnished upon request;

(5) Advise prospective contractors of the interpretation of quality requirements;

(6) Arrange for participation of personnel responsible for quality assurance in proposal or bid evaluations and negotiations, as necessary;

(7) Insure that the provisions of the contract are specific as to the contractor's responsibility for meeting quality requirements;

(8) Insure that responsibility is designated for performance of Government quality assurance functions at suppliers' plants to a NASA installation or to another Government agency, or both; and

(9) Notify the contractor, the delegated agency, and the assigned representatives of the NASA installation as to quality assurance functions delegated, and the functions to be performed by the NASA installation. Letters outlining delegated functions shall be specific as to the quality assurance effort required, and those outlining functions to be performed by the NASA installation at plant sites shall set forth the duties, responsibilities, and authority of installation personnel assigned to perform these functions.

(d) **NASA installations.** Detailed procedures shall be established by the NASA installations to implement this subpart, including: assigning and defining personnel responsibilities and duties, routing of procurement requests, recording of technical and quality requirements, notification of meetings and negotiations, and establishing quality requirements in accordance with the categories of procurement.

**§ 18-1.5004 Procedures.**

This section specifies additional related actions with regard to the procurement process.

(a) **Procurement plan.** Procurement plans prepared in accordance with § 18-3.852 shall include:

(1) Extent of applicability of NHB 5300.4(1B) or NPC 200-3.

(2) Planned funding (best estimates by fiscal year) for the quality program.

(b) **Evaluation of proposals.** Evaluation shall include consideration of quality factors concerning the prospective contractor's proposal, quality system, plan, capability, and past performance prior to final recommendation for award. These quality factors are items to be considered during preaward surveys conducted in accordance with § 18-1.905-50. Evaluation of these factors are required regardless of the evaluation method used.

(c) **Inspection and acceptance.** (See Part 18-14 of this chapter.)

**Subpart 18-1.51—Integration of Reliability Requirements Into NASA Procurements**

**§ 18-1.5100 Scope of subpart.**

This subpart establishes procedures for implementing reliability policies prescribed in NASA Policy Directive 5300.7, "Basic Policy for Reliability and Quality Assurance" with the procurement of systems, by:

(a) Establishing general principles of systematic reliability assurance actions on NASA procurements;

(b) Detailing the application of NASA Reliability Publication "Reliability Program Provisions for Space Systems Contractors" (NPC 250-1); and

(c) Defining the level at which reliability program requirements are to be placed on contractors.

**§ 18-1.5101 Policy.**

NASA reliability policy, as reflected in NASA Policy Directive 5300.7, is that:

(a) Every practical means shall be employed to achieve high system reliability at the earliest possible stage of system development;

(b) Reliability program requirements shall be placed on NASA system contractors; and

(c) Contractor performance in achieving system reliability will be guided and monitored by the cognizant NASA field installation.

**§ 18-1.5102 Definitions.**

For the purpose of this subpart, the following definitions apply:

(a) *Major system element.* Any element of a system considered by the cognizant NASA installation to be sufficiently critical to reliability of the system to require use of a formal reliability program from its design through end use.

(b) *Reliability.* The probability that a system, subsystem, component, or part will perform its required functions under defined conditions at a designated time and for a specified operating period.

(c) *Reliability program.* A series of tasks, systematized under a comprehensive plan, which is designed to achieve the required level of reliability in the design and development of a hardware end item.

(d) *Reliability assurance.* A planned and systematic pattern of all actions necessary to provide adequate confidence that a space system or portion thereof (including test equipment) will perform reliably in actual operation. This includes actions to—

(1) Plan for achievement of satisfactory reliability when formulating procurement documents;

(2) Plan and execute reliability programs pertinent to each phase of the work from design through end use of the system hardware;

(3) Monitor and guide contractor reliability efforts; and

(4) Ascertain and insure that the necessary level of reliability is being attained.

**§ 18-1.5103 Application.**

(a) The procedures prescribed in this subpart are applicable to:

(1) New procurements of complete space systems; principal systems making up a space system (e.g., launch vehicles, spacecraft, test equipment, etc.); critical subsystems; or critical components; where the cost of the procurement is estimated in the Procurement Plan to exceed \$1 million. (See paragraph (b), of this section, for smaller procurements of critical items.) It is not necessarily applicable to smaller procurements, to procurements of noncritical subsystems, or to procurements where the contractor does not have design responsibility.

(2) Amendments to existing contracts of the types stated in subparagraph (1) of this paragraph which after amend-

ment exceed \$1 million. In applying NPC 250-1 to existing contracts, cognizant personnel shall exercise discretion to prescribe only those program requirements still considered timely in light of project completion status and to prescribe them to the extent that anticipated benefits are considered to be commensurate with cost.

(b) For procurements of \$1 million or less where the contractor has design responsibility for a space system or for critical hardware, end items, or equipment to serve as part of a space system (including critical test equipment), the cognizant NASA installation shall:

(1) Determine and impose selected applicable reliability program requirements (e.g., design review, design specifications, failure analysis, parts and materials program, qualification and flight assurance testing); and

(2) Follow those procedures set forth in § 18-1.5104(a) considered by the installation to be applicable.

**§ 18-1.5104 Responsibilities.**

(a) *Originators of procurement requests.* Originators of procurement requests shall consult as early as possible with appropriate reliability assurance personnel to determine the extent of applicability of NASA Reliability Publication 250-1 to the procurement and shall:

(1) Summarize, in the procurement request, the extent to which the reliability program provisions of NPC 250-1 will be placed on the contractor;

(2) Cite, in the procurement request, applicable specifications, standards, design reliability criteria, or other documents which further define reliability requirements;

(3) Assist contracting officers in the preparation of procurement plans to insure that the plans include necessary provisions for reliability assurance;

(4) Provide in the Statement of Work detailed guidance on the extent of applicability of the provisions of NPC 250-1 and other reliability documents of the contract (for technical factors requiring definitization, see § 18-1.5106); and

(5) Provide to the contracting officer necessary copies of items described in subparagraph (2) of this paragraph for inclusion in the request for proposal, or advise the contracting officer as to where they can be obtained.

(b) *Contracting officers.* Contracting officers, with or through appropriate reliability assurance personnel, shall:

(1) Review the reliability assurance requirements established by the originator of each procurement;

(2) Determine the applicable requirements where reliability assurance requirements appear to be inadequate or have been omitted (this will be accomplished in coordination with, and with verification by, the originator);

(3) Advise all prospective contractors for the procurement in question of reliability requirements and reliability program requirements for the particular procurement;

(4) Insure that the provisions of the contract are specific as to the contrac-

tor's responsibility for meeting reliability requirements; and

(5) Insure that the contractor meets the terms and conditions of the contract relative to reliability requirements.

(c) *Reliability assurance personnel.* Reliability assurance personnel shall:

(1) Advise and assist originators of procurement requests in performing the functions prescribed in paragraph (a) of this section;

(2) Advise and assist contracting officers in the functions prescribed in paragraph (b) of this section;

(3) Advise and assist installation project personnel in guidance and monitoring of contractor reliability programs; and

(4) Take other actions as necessary to insure that the system being procured meets required levels of reliability.

**§ 18-1.5105 Procedures.**

(a) *Processing of procurement documents for procurements of systems expected to exceed \$1 million—(1) Procurement requests.* The procurement request for a system will include, in the description of the procurement, a statement of reliability requirements, in accordance with § 18-1.5104(a) (1) and (2).

(2) *Procurement plans.* The procurement plans for a system will contain provisions for reliability assurance, including a summary of reliability program requirements.

(3) *Review and approval of procurement plans.* (See § 18-3.852-2).

(4) *Requests for proposals.* Requests for proposals will include:

(i) Detailed definitization of the reliability program requirements and reliability goals for the contract, including extent of applicability of NPC 250-1, and copies of other pertinent documents which define reliability program requirements. (For technical factors requiring decisions or elaboration in work statements, see §§ 18-1.5104(a) (4) and 18-1.5106.)

(ii) Definition of the degree of detail desired in the proposal to describe the contractor's qualifications in the reliability area and his proposed reliability program. Where only limited detail is desired in the proposal, a requirement for an intermediate reliability program plan will be included for the prospective contractor(s) selected for negotiation.

(iii) Directions for obtaining additional copies (if available) of documents provided in subdivision (i) of this subparagraph. This will include a statement that the quantity of NPC 250-1 required for performance of the contract will be provided to the contractor by the contracting officer and that additional copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401.

(5) *Proposal evaluation documentation.* Section 3.804-2(b) relating to source evaluation procedures in procurements not involving source evaluation boards, specifies that the documentation of technical evaluations of proposals

## RULES AND REGULATIONS

shall include an evaluation of the company's proposed method of achieving the reliability required.

(6) *Reliability representation on source evaluation boards.* Paragraph 300 of the Source Evaluation Board Manual (NPC 402) provides for the participation of the designee of the Director of Reliability and Quality Assurance, NASA Headquarters, in Source Evaluation Board proceedings.

(b) *Monitoring of reliability effort.* The following measures, used in appropriate combinations, are considered effective tools for use by cognizant NASA installations in the guidance and monitoring of contractor reliability efforts:

(1) Use of resident NASA technical representatives in hardware contractor facilities (or, as a minimum, use of frequent reliability surveys by non-resident NASA teams);

(2) Conducting in-house reliability studies; and

(3) Use of independent reliability assessment contractors to assist NASA in assessment of system reliability or evaluation of the effectiveness of the hardware contractor's reliability program.

(c) *Inclusion of NPC 250-1 in the contract.* NASA Reliability Publication NPC 250-1 will be invoked in the contract via an appropriate contract clause designed to clarify any ambiguities which may exist. A sample clause is as follows:

In performance of work under the contract, the Contractor shall implement a reliability program in accordance with NASA Reliability Publication NPC 250-1 [indicate edition] as further defined in the Statement of Work. Guidance and monitoring of the Contractor's reliability effort, as well as approval or review authority for reliability program documentation, shall be the responsibility of the Contracting Officer, his authorized technical representatives, or their designees. The Contracting Officer will advise the Contractor, as well as appropriate NASA representatives and the Government inspection agency, by letter as to the identity (title, organization, and location) of his authorized technical representatives and the specific office or offices to which various items of required reliability program documentation shall be submitted.

§ 18-1.5106 Technical factors (requests for proposals and statements of work).

Procurement requests and statements of work will provide guidance on the following technical factors when NASA Reliability Publication NPC 250-1 is invoked:

(a) NASA Reliability Publication NPC 250-1 prescribes that the contractor's reliability organization will monitor certain tasks, the actual conduct of which is a part of the overall project effort. In the preparation of Statements of Work, the originator of the procurement request shall specify that these tasks are requirements unless specifically modified or waived. Paragraph references to NPC 250-1 in this category where additional guidance should be included in the Statement of Work are as follows:

NASA NPC 250-1  
paragraph number

## Description of action

- |  |   |
|--|---|
| 3.5—Maintainability, and elimination of human-induced failure. | Define the extent of effort required in these areas with respect to the overall space system and each of its various elements (requirements will often differ from element to element within the system). Where the system involves subsystems capable of being maintained by personnel while in use, or where flight safety of personnel is involved, append, or otherwise provide, appropriate documents giving detailed guidance to the contractor on requirements in this area.   |
| 3.8—Standardization of design practices--                      | Make clear that the standards effort will be limited to that required to modify existing contractor standards to meet system requirements and that it is not necessarily intended to have the contractor set up a complete new standards system at NASA expense. Also, provide any NASA design criteria which the contractor will be required to use.   |
| 4.3—Testing -----  | The Statement of Work should clearly specify the requirement for:<br>(A) An integrated test program which includes all tests (with specified exceptions) under the contract. Also indicate that tests (except reliability demonstrations) which include reliability inputs, or produce, along with other results, data for evaluation of reliability, should be referred to as the appropriate type of performance test, and not be termed a "reliability" test.<br>(B) Qualification testing of all elements of the system (consistent with project requirement). Indicate required levels of over-stress to be employed in these tests where appropriate and specifically require the contractor to submit separate test specifications for each qualification test (containing appropriate overstress requirements), which will be subject to NASA review prior to use.<br>(C) Flight assurance testing requirements at appropriate levels of assembly, together with guidance on required levels of stress to be employed, and configuration control requirements. Require the contractor to submit a separate specification for each flight assurance test, which will be subject to NASA review prior to use. |
| 5.1—General documentation-----                                 | State whether the contractor is required to establish a data center, and clearly define the scope of effort required of the prime contractor and of subcontractors (as required to be consistent with the system data center). Also make clear that the "unified file" of reliability information is a requirement only where the overall data center is not required.  |

(b) Additional guidance as to the extent of applicability of reliability task requirements will be given for the following paragraphs of NPC 250-1:

NASA NPC 250-1  
paragraph number

## Description of action

- |  |  |
|--|--|
| 2.2.2—Preliminary reliability program plan (see also Appendix B).  | Indicate the degree of detail desired in the proposed reliability program and in the submittal of information on the contractor's qualifications.  |
| 2.2.3—Intermediate reliability program plan (see also Appendix C). | Indicate any desired variations from the procedure prescribed in NPC 250-1. Where it is desired to omit this submittal, prescribe that the requirements of this paragraph be combined with those of paragraph 2.2.2 in preparing the proposal.                         |
| 2.4—Reliability program control-----                               | Give specific guidance on those aspects of control for which the NASA installation has special requirements and, if appropriate, for the preferred system of control.  |
| 2.6—Subcontractor and supplier control--                           | List those elements of the system considered by NASA to be "major" in terms of the need for reliability control by a formal reliability program. The list may be identified as "suggested" where it is desired to obtain contractor inputs for subsequent negotiation. |

NASA NPC 250-1  
paragraph number

	<i>Description of action</i>
2.6.3—Resident representatives-----	Indicate those of the system elements listed as "major" which are considered by NASA to require use of resident prime contractor representatives in subcontractor facilities. This list may be identified as "suggested" where it is desired to defer the final decision until specific information on subcontracts is proposed.
2.7—Government-furnished property----	Indicate which elements, if any, of the system will be Government-furnished property and provide information on the characteristics, including reliability, of each to enable the contractor to plan and propose his reliability program with appropriate consideration for Government-furnished property.
3.3—Reliability prediction and estimation.	Specify the milestone or time at which the initial prediction is required and the succeeding major or intermediate milestones at which revised predictions are required. Also, if appropriate to installation or program requirements, prescribe the method of prediction to be used and furnish detailed supplemental guidance (see paragraph No. 4.4).
3.7—Failure reports-----	If a specific format and numbering system is to be prescribed by NASA, so indicate.
3.9.2—Parts selection-----	Where the requirements of the program dictate use of parts already proven for other systems, data on such parts should be provided to enable the contractor to limit the scope of his parts selection effort.
3.9.3—Parts and materials specifications---	Provide or cite available specifications for proven parts. Where it is desired to limit the scope of contractor effort in this area, provide appropriate guidance.
4.3.4—Reliability demonstration tests-----	Provide specific guidance as to type, conditions, and duration of demonstration testing consistent with program requirements.
4.4—Reliability assessment-----	Make clear that the "assessment" is an evolution of the "prediction" and not an overlapping task. Indicate major and intermediate milestones at which initial and revised assessments are required (see paragraph No. 3.3).
5—Documentation of reliability program.	Indicate the specific documentation requirements appropriate to the program (see Appendix F of NPC 250-1), including the number of copies of each document required for submittal.

**Subpart 18-1.52—Safety and Health**

**§ 18-1.5200 Scope of subpart.**

This subpart sets forth the policy, responsibility, and requirements relating to NASA's safety and health programs with regard to its contractors.

**§ 18-1.5201 Policy.**

It is NASA policy that contractors and subcontractors undertake performance in a safety and health conscious environment which, within the limits of controllable hazards, will:

- (a) Protect the life, health, and physical well-being of NASA and contractor employees during their work on NASA programs;
- (b) Assure proper protection of the public from hazards incident to operations of NASA contractors and subcontractors;
- (c) Avoid accidental work interruptions which could delay NASA programs;
- (d) Prevent contamination of property, supplies and equipment; and
- (e) Provide data whereby risks and loss factors in space technology related to NASA programs can be accumulated and evaluated.

**§ 18-1.5202 Responsibility.**

(a) *Originators of procurement requests.* Originators of procurement requests will ensure, in accordance with installation developed safety and health screening criteria, that procurement requests affected by considerations of safety or health are processed through the appropriate installation Safety Official and installation Medical and Environmental Health Officers or other designated responsible official for: (1) Determination as to whether hazards are involved in the procurement; (2) formulation or selection of specific safety and health provisions applicable to the procurement in accordance with § 18-1.351 "Procurement of Potentially Hazardous Items" or § 18-1.5204; and (3) determining to what extent a contractor safety and health plan will be required. (See NASA Management Instruction 5101.12A, "Policy and Procedures Concerning Procurement Requests".)

(b) *Installation safety official and the installation medical and environmental health officers or other designated responsible official.* The appropriate installation safety and health officials, within their respective areas of responsibility,

will advise and assist the contracting officer in:

- (1) Evaluating prospective contractors' safety and health programs pursuant to Subpart 18-1.9;
- (2) Determining to what extent safety and health provisions, if any, should be included in a proposed procurement;
- (3) Selecting the specific safety provisions to be included in a contract schedule;
- (4) Determining, in coordination with the cognizant Program or Project Manager, the need for and the adequacy of contractors' safety and health plans;
- (5) Selecting the specific occupational medicine and environmental health provisions to be included in a contract schedule; and

(6) Determining the extent and form of accident or incident reports, in compliance with the Federal Reports Act of 1942, required of contractors.

(c) *Headquarters assistance.* At installations where medical and environmental health officers or other designated responsible officials are not available to assist with the formulation of occupational medicine and environmental health provisions of a contract, the Director of Occupational Medicine and Environmental Health, NASA Headquarters, will assume this responsibility.

(d) *Contracting officer—(1) Safety.* The contracting officer will obtain the advice, assistance, and recommendations from the safety official prior to the issuance of an invitation for bid or request for proposal in the following procurements:

- (i) Construction of facilities on Government installations;
- (ii) Manufacture of aerospace systems, including such items as boosters, engines, liquid and solid fuels, oxidizers, and/or propellants;

(iii) Transportation of fuels, oxidizers, space-related chemicals, and other hazardous materials;

(iv) Research, development or test of engines, related components and propellants which involve hazardous operations or the use of hazardous materials; and

(v) Services on Government installations which involve hazardous operations or the use of hazardous materials.

(2) *Health.* The contracting officer will obtain the advice, assistance and recommendations from the medical and environmental health officers or other designated responsible officials prior to the issuance of an invitation for bid or request for proposal in the following procurements:

(i) Manufacture of boosters, engines, liquid and solid fuels, oxidizers, and/or propellants;

(ii) Transportation of fuels, oxidizers, space-related chemicals, and other health-hazard materials;

(iii) Research, development or test of engines, related components and propellants which involve health hazards or the use of materials presenting a health hazard;

(iv) Operations which involve health hazards or the use of hazardous materials, including potential contamination of property, and pollution of air, water, vegetation, and soil;

(v) Adverse alteration of the work environment by activities concerned with ionizing radiation, microwaves, ambient noise, lasers, ultraviolet, infrared, etc., by either direct or secondary effect; and

(vi) Hyperbaric exposure in neutral buoyancy or related operations.

(3) Before issuing a stop-work order under paragraph (d) (2) of the "Safety and Health" clause, prior coordination will be effected with the safety and health officials and with the cognizant program or project manager.

#### § 18-1.5203 Hazardous materials and operations.

(a) *Safety.* Hazardous materials for the purpose of this subpart are those which are highly reactive, explosive, flammable, or corrosive, such as propellants (solid, liquid, hybrid, gels); radioactive sources (as they affect hardware and instrumentation), acids, and finely powdered metals. Hazardous operations for the purpose of this subpart are those which are concerned with the use of hazardous materials, or involve equipment or phenomena, such as fire, heat, pressure, reduced gravity, electricity, vacuum, detonations/explosions (blast-overpressures, fireballs, fragmentation), and radiation (thermal and electromagnetic).

(b) *Health.* Hazardous materials and operations for the purpose of this Subpart are those which can be deleterious to health or produce contamination and pollution of the environment and its constituents, such as property, vegetation, air, water, and soil. Health hazard materials include, but are not limited to, physical, chemical, radiological, and biological effects. Potentially significant health hazards include, but are not limited to, noise, vibration, chemical substances, ionizing radiation, ultraviolet, infrared, and microwave radiation, abnormal temperature and pressure, inadequate or excessive illumination, lasers, pesticides, underwater operations, and various biologic agents.

#### § 18-1.5204 Contract provisions.

(a) Specific system safety requirements which are to be included in the contract for the purpose of procuring system safety engineering services shall be defined in the contract schedule in accordance with § 18-1.5202 (a) (2) and (b) (3).

(b) Any unique facility safety or health requirements, which are in addition to the general provisions of the "Safety and Health" clause required herein, shall be prescribed as required by § 18-1.5202(b) (3).

(c) The following clause shall be included in:

(1) All negotiated contracts of \$1 million or more, unless the contracting officer makes a written determination in accordance with § 18-1.5202(b) that, under the circumstances of the procurement, the clause is not necessary;

(2) All construction, repair, or alteration contracts in excess of \$10,000;

(3) All contracts having, within their total requirement, construction, repair or alteration tasks in excess of \$10,000; and

(4) In any procurement regardless of dollar amount when: (i) the deliverable contract end items are of a hazardous nature; (ii) during the life of the contract it can reasonably be expected that hazards will be generated within the operational environment, and the contracting officer determines that the hazards in the procurement warrant the inclusion of the clause.

(d) This clause may, however, be excluded from any contract which is subject to either the Walsh-Healy Public Contracts Act (§ 18-12.601) or the Services Contract Act of 1965 (§ 18-12.1004) and in which the application of either Act and any regulations thereunder constitute adequate safety and health protection.

#### SAFETY AND HEALTH (NOVEMBER 1969)

(a) The Contractor shall take all reasonable safety and health measures in performing under this contract and shall, to the extent set forth in the schedule of the contract, submit a safety plan and a health plan for the Contracting Officer's approval. The Contractor is subject to (i) all applicable Federal, State, and local laws, regulations, ordinances, codes, and orders relating to safety and health in effect on the date of this contract; and (ii) shall comply with the Safety and Health Standards, specifications and issuances, reporting requirements, and provisions as set forth in the schedule of the contract.

(b) Further, the Contractor shall take or cause to be taken such other safety and health measures as the Contracting Officer shall direct. To the extent that the Contractor is entitled to an equitable adjustment under the terms and conditions of this contract, or any other obligations of the parties, such equitable adjustment shall be determined pursuant to the procedures of the clause of this contract entitled "Changes": *Provided*, That no adjustment shall be made under this clause for any change for which an equitable adjustment is expressly provided under any other provision of this contract.

(c) The Contractor shall immediately notify and promptly report to the Contracting Officer or his representative, any accident or incident or exposure resulting in fatality, disabling injury or occupational disease or contamination of property, as defined by United States of America Standards Institute (Standard Method for Reporting and Recording Occupational Injuries, Z16.1), or property loss of \$10,000 or more arising out of work performed under this contract: *Provided, however*, The Contractor will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the Contractor shall comply with any illness, incident and injury experience reporting requirements set forth in the Schedule of the contract. The Contractor will investigate all such work related incidents or accidents to persons and property to the extent necessary to positively conclude what cause or causes resulted in said accident or incident, and furnish the Contracting Officer with a report, in such form as the Contracting Officer may require, of the investigative findings, together with proposed and/or completed corrective actions.

(d) (1) The Contracting Officer may, from time to time, notify the Contractor in writing of any noncompliance with the provisions of this clause and may specify corrective actions to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with (d) (1) above, the Contracting Officer may invoke the provisions of the clause in the contract entitled "Stop Work," or may invoke whatever other rights are available to the Government under the terms and conditions of this contract or at common law, to remedy such failure or refusal to institute prompt corrective action.

(e) The Contractor (or subcontractor or supplier) shall cause the substance of this clause including this paragraph (e) and any applicable Schedule Provisions, with appropriate changes of designations of the parties, to be inserted in subcontracts of every tier which: (i) Amount to \$1 million or more unless the Contracting Officer makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the Contractor, regardless of dollar amount, determines that hazardous materials or operations are involved.

(f) The Contractor agrees that authorized Government representatives of the Contracting Officer shall have access to and the right to examine the sites or areas where work under this contract is being performed to determine the adequacy of the Contractor's safety and health measures under this clause.

GEORGE J. VECCHIETTI,  
Director of Procurement, National Aeronautics and Space Administration.

[F.R. Doc. 70-16684; Filed, Dec. 10, 1970; 8:47 a.m.]

## Title 30—MINERAL RESOURCES

### Chapter III—Board of Mine Operations Appeals, Department of the Interior

#### PART 300—ORGANIZATION

#### PART 302—PROCEDURES UNDER FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT OF 1966

#### Miscellaneous Amendments

A new Chapter III, Parts 300 and 302, to Title 30, Mineral Resources, was published in the August 1, 1970, FEDERAL REGISTER (35 F.R. 12336). Several minor editorial changes to the parts are listed below. These changes are effective upon publication in the FEDERAL REGISTER.

RICHARD R. HITE,  
Deputy Assistant Secretary  
for Administration.

DECEMBER 3, 1970.

1. The heading of § 300.3 in the table of contents is changed to read:

Sec.  
300.3 Composition of the Board.

2. Headings to Subpart B and of the following sections, listed in the table of contents, are changed to read:

Subpart B—Application for Review of Orders

- Sec.
- 302.15 Brief or written argument.
- 302.17 Oral argument.
- 302.18 Decisions and orders of the Board.

3. The heading of § 300.3 is changed to read:

§ 300.3 Composition of the Board.

4. The heading of Subpart B of Part 302 is changed to read:

Subpart B—Application for Review of Orders

5. Section 302.3(b) is changed to read:

§ 302.3 Public information.

(b) As a matter of public information, a copy of the order, the initial inspection report, the application to review, and the reviewing inspector's report shall be kept available at the issuing office of the Bureau of Mines for inspection by interested persons.

6. The heading of § 302.15 is changed to read:

§ 302.15 Brief or written argument.

7. The heading of § 302.17 is changed to read:

§ 302.17 Oral argument.

[F.R. Doc. 70-16662; Filed, Dec. 10, 1970; 8:45 a.m.]

Chapter V—Interim Compliance Panel (Coal Mine Health and Safety)

SUBCHAPTER C—GENERAL ADMINISTRATION

PART 505—PRACTICE AND PROCEDURE FOR HEARINGS UNDER SUBCHAPTERS A AND B OF THIS CHAPTER

Requests for Public Hearings

Pursuant to the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173) the Panel is authorized to issue to operators of underground coal mines permits for noncompliance with certain health and safety requirements provided for by the Act. Under certain circumstances an applicant, the representative of the miners at the applicant's mine, or other persons interested in the application, may request public hearings thereon. The amendments to Part 505, reading as set forth below, result from the adoption by the Panel of 30 CFR Part 503, Permits for Noncompliance with the Electric Face Equipment Standard, which was published in the FEDERAL REGISTER on December 1, 1970.

Sections 505.10(a) and 505.12(a) are amended to include interested persons in addition to the applicant or a representative of the miners when the request for hearing results from the Panel's action on an application for an

initial permit for nonpermissible equipment pursuant to Part 503.

Sections 505.10(d) and 505.12(d) are added to furnish to the operator-applicant an opportunity for hearing following the Panel's action on an application for renewal of a permit pursuant to Part 503 where no hearing has been held on such application.

Section 505.12(b) is amended to conform with the Panel's policy of publishing notice of opportunity for hearing for each timely filed application when it is received rather than when it is accepted for consideration.

No notice of proposed rule making was published because these are rules of agency procedure or practice (5 U.S.C. 553(b) (A)).

Part 505, Subchapter C of Chapter V of Title 30, Code of Federal Regulations, is amended as follows:

Subpart B—Requests for Public Hearings, Participants

§ 505.10 Persons who may file requests.

Requests for public hearings will be considered by the Panel only if such requests are filed with the Panel by any of the following:

(a) (1) An applicant aggrieved by a decision on an application for an initial permit (other than one under section 305(a) (2) of the Act).

(2) A representative of the miners at the applicant's mine aggrieved by a decision on an application for an initial permit (other than one under section 305 (a) (2) of the Act).

(3) Where the application concerns an initial permit under § 503.5 of this chapter, a person interested in the application who is aggrieved by a decision of the Panel.

(d) Pursuant to § 503.8(c) of this chapter, an applicant aggrieved by a decision on an application for a renewal permit under § 503.6 of this chapter where no public hearing has been held on the application.

§ 505.12 Time for filing of requests.

(a) The Panel will consider a request for a public hearing filed by any of the persons specified by § 505.10(a) if the request is filed within 15 days after the date of mailing by the Panel of notice of such decision.

(b) The Panel will consider a request for a public hearing filed by a person interested in an application for a renewal permit or for an initial permit under section 305(a) (2) of the Act, if such request is filed by such person within 15 days after publication in the FEDERAL REGISTER of a notice that the application has been received by the Panel.

(d) The Panel will consider a request for a public hearing filed by an applicant pursuant to § 503.8(c), of this chapter, if such request is filed within 15

days after the date of mailing by the Panel of its decision on the application.

These amendments shall become effective upon publication in the FEDERAL REGISTER.

Dated: December 4, 1970.

GEORGE A. HORNBECK,  
Chairman,  
Interim Compliance Panel.

[F.R. Doc. 70-16666; Filed, Dec. 10, 1970; 8:46 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration  
PART 2—DELEGATIONS OF AUTHORITY

Deputy Chief Medical Director

In § 2.6(a), subparagraph (7) is added to read as follows:

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

Employees occupying or acting in the positions designated in this section are delegated authority as indicated:

(a) *Department of Medicine and Surgery.* The Chief Medical Director is delegated authority:

(7) To designate the Deputy Chief Medical Director of the Department of Medicine and Surgery, and authority is hereby delegated such designee to designate a Veterans Administration full-time physician or nonmedical Director to serve "as an ex officio member" on advisory bodies to State Comprehensive Health Planning agencies and to individual Regional Medical Programs in those areas in which there is located one or more Veterans Administration hospitals or other health facilities, who shall serve on such advisory group as the representative of the Veterans Administration health facilities located in that area.

(72 Stat. 1114; 38 U.S.C. 210)

This VA regulation is effective October 30, 1970.

Approved: December 5, 1970.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,  
Associate Deputy Administrator.

[F.R. Doc. 70-16663; Filed, Dec. 10, 1970; 8:46 a.m.]

PART 36—LOAN GUARANTY

Refinancing

Sections 36.4306, 36.4354 and 36.4507 are revised to read as follows:

**§ 36.4306 Refinancing of mortgage or other lien indebtedness.**

(a) Except as provided in paragraph (e) of this section, any loan for the purpose of refinancing an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as his home shall be submitted to the Administrator for prior approval. A loan for such purpose shall be eligible for guaranty in an amount not to exceed sixty (60) percent of the loan amount or \$12,500, whichever is less, provided that—

(1) The amount of the loan does not exceed the sum due the holder of the mortgage or other lien indebtedness on such dwelling or farm residence, and also is not more than the reasonable value of the dwelling or farm residence,

(2) The discount, if any, to be paid by the veteran is reasonable in amount, and

(3) The loan is otherwise eligible for guaranty.

(b) A refinancing loan for an amount which exceeds the sum due the holder of the mortgage or other lien indebtedness (the excess loan proceeds to be paid to the veteran) but does not exceed the reasonable value of the property may also be approved for guaranty provided that—

(1) The discount, if any, to be paid by the veteran is reasonable in amount,

(2) The loan is otherwise eligible for guaranty, and

(3) The issuance of a guaranty commitment on any such loan which exceeds eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence shall require, unless the Chief Benefits Director otherwise directs, the approval of the Director, Loan Guaranty Service.

(c) Nothing in 38 U.S.C. chapter 37 shall preclude guaranty of a loan to an eligible veteran having home loan guaranty entitlement to refinance a Veterans Administration guaranteed or insured (or direct) mortgage loan made to him which is outstanding on the dwelling or farm residence owned and occupied by him as his home.

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) For lenders of a class specified in the first sentence of 38 U.S.C. 1802(d), the effective date of the prior approval requirement in paragraph (a) of this section is January 18, 1971.

(f) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

**§ 36.4354 Land sale contracts.**

Loans to refinance the balance owed by a veteran on an existing land sale contract relating to farm or business property (38 U.S.C. 1812 or 1813) may be guaranteed or insured: *Provided*, That, (a) if the contract was executed within

1 year of the date of application for the loan, the purchase price contained in the terms of the contract shall not be in excess of the current appraised reasonable value of the property; and (b) if the contract was executed more than 1 year prior to the date of the application, the purchase price contained in its terms shall not be in excess of the appraised reasonable value of the property as of the date of the execution of the contract and the unpaid amount of the contract shall not be in excess of the current appraised reasonable value of the property.

**§ 36.4507 Refinancing of mortgage or other lien indebtedness.**

(a) Loans may be made for the purpose of refinancing an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as his home, provided that—

(1) The amount of the loan does not exceed the sum due the holder of the mortgage or other lien indebtedness on such dwelling or farm residence, and also is not more than the reasonable value of the dwelling or farm residence, and

(2) The loan is otherwise eligible.

(b) A refinancing loan for an amount which exceeds the sum due the holder of the mortgage or other lien indebtedness (the excess proceeds to be paid to the veteran) may also be made, provided that—

(1) The loan is otherwise eligible, and

(2) The issuance of a commitment to make any such loan for an amount which exceeds eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence shall require, unless the Chief Benefits Director otherwise directs, the approval of the Director, Loan Guaranty Service.

(c) Nothing in 38 U.S.C. chapter 37 shall preclude making a loan to an eligible veteran having home loan guaranty entitlement to refinance a loan previously guaranteed, insured or made by the Administrator which is outstanding on the dwelling or farm residence owned and occupied by the veteran as his home.

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective upon publication in the FEDERAL REGISTER.

Approved: December 7, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,  
Deputy Administrator.

[F.R. Doc. 70-16669; Filed, Dec. 10, 1970; 8:45 a.m.]

## Title 42—PUBLIC HEALTH

### Chapter I—Public Health Service, Department of Health, Education, and Welfare

#### SUBCHAPTER G—PREVENTION, CONTROL, AND ABATEMENT OF AIR POLLUTION

#### PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

##### Southwest Pennsylvania Intrastate Region

On September 22, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 14728) to amend Part 81 by redesignating the Metropolitan Pittsburgh Intrastate Air Quality Control Region, hereafter referred to as the Southwest Pennsylvania Intrastate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on September 30, 1970. Due consideration has been given to all relevant material presented with the result that the proposed rule is adopted without change.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.23, as set forth below, designating the Southwest Pennsylvania Intrastate Air Quality Control Region, is adopted effective on publication.

##### § 81.23 Southwest Pennsylvania Intrastate Air Quality Control Region.

The Southwest Pennsylvania Intrastate Air Quality Control Region is redesignated to consist of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Pennsylvania:  
Allegheny County. Indiana County.  
Armstrong County. Washington County.  
Beaver County. Fayette County.  
Butler County. Westmoreland County.  
Greene County.  
Fayette County.

(Secs. 107(a), 301(a), 81 Stat. 400, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 17, 1970.

JOHN T. MIDDLETON,  
Commissioner, National Air  
Pollution Control Administration.

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,  
Secretary.

[F.R. Doc. 70-16678; Filed, Dec. 10, 1970; 8:47 a.m.]

**PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES**

**Northeast Pennsylvania-Upper Delaware Valley Interstate Region**

On September 22, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 14728) to amend Part 81 by redesignating the Allentown - Bethlehem - Easton (Pennsylvania) - Phillipsburg (New Jersey) Interstate Air Quality Control Region, hereafter referred to as the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on September 30, 1970. Due consideration has been given to all relevant material presented with the result that the proposed rule is adopted without change.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.55, as set forth below, designating the Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region, is adopted effective on publication.

**§ 81.55 Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.**

The Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region (Pennsylvania-New Jersey) is redesignated to consist of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Pennsylvania:

Berks County.	Pike County.
Bradford County.	Schuylkill County.
Carbon County.	Sullivan County.
Lackawanna County.	Susquehanna County.
Lehigh County.	
Luzerne County.	Tioga County.
Monroe County.	Wayne County.
Northampton County.	Wyoming County.

In the State of New Jersey:

Hunterdon County.	Warren County.
Sussex County.	

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 17, 1970.

JOHN T. MIDDLETON,  
*Commissioner, National Air Pollution Control Administration.*

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,  
*Secretary.*

[F. R. Doc. 70-16676; Filed, Dec. 10, 1970; 8:47 a.m.]

**PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES**

**Certain Intrastate Regions in Florida**

On September 4, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 14087) to amend Part 81 by designating the Central Florida, West Central Florida, and Southwest Florida Intrastate Air Quality Control Regions and by redesignating the Southeast Intrastate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on September 17, 1970. Due consideration has been given to all relevant material presented with the recommendation that Sarasota County, originally proposed in the West Central Florida Intrastate Air Quality Control Region, now be added to the Southwest Florida Intrastate Air Quality Control Region.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.95, as set forth below, designating the Central Florida Intrastate Air Quality Control Region; § 81.96, as set forth below, designating the West Central Florida Intrastate Air Quality Control Region; § 81.97, as set forth below, designating the Southwest Florida Intrastate Air Quality Control Region; and § 81.49, as set forth below, redesignating the Southeast Florida Intrastate Air Quality Control Region, are adopted effective on publication.

**§ 81.95 Central Florida Intrastate Air Quality Control Region.**

The Central Florida Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Florida:

Brevard County.	Osceola County.
Lake County.	Seminole County.
Orange County.	Volusia County.

**§ 81.96 West Central Florida Intrastate Air Quality Control Region.**

The West Central Florida Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Florida:

Citrus County.	Manatee County.
Hardee County.	Pasco County.
Hernando County.	Pinellas County.
Hillsborough County.	Polk County.
Levy County.	Sumter County.

**§ 81.97 Southwest Florida Intrastate Air Quality Control Region.**

The Southwest Florida Intrastate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Florida:

Charlotte County.	Hendry County.
Collier County.	Highlands County.
De Soto County.	Lee County.
Glades County.	Sarasota County.

**§ 81.49 Southeast Florida Intrastate Air Quality Control Region.**

The Southeast Florida Intrastate Air Quality Control Region is redesignated to consist of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Florida:

Broward County.	Monroe County.
Dade County.	Okeechobee County.
Indian River County.	Palm Beach County.
Martin County.	St. Lucie County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 17, 1970.

JOHN T. MIDDLETON,  
*Commissioner, National Air Pollution Control Administration.*

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,  
*Secretary.*

[F.R. Doc. 70-16677; Filed, Dec. 10, 1970; 8:47 a.m.]

**PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES**

**Northwest Pennsylvania-Youngstown Interstate Region**

On September 22, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 14728) to amend Part 81 by redesignating the Youngstown (Ohio)-Erie (Pennsylvania) Interstate Air Quality Control Region, hereafter referred to as the Northwest Pennsylvania-Youngstown Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule

making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on September 30, 1970. Due consideration has been given to all relevant material presented with the result that the proposed rule is adopted without change.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.74, as set forth below, designating the Northwest Pennsylvania-Youngstown Interstate Air Quality Control Region, is adopted effective on publication.

**§ 81.74 Northwest Pennsylvania-Youngstown Interstate Air Quality Control Region.**

The Northwest Pennsylvania-Youngstown Interstate Air Quality Control Region (Pennsylvania-Ohio) is redesignated to consist of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h (f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Ohio:

Ashtabula County. Trumbull County.  
Mahoning County.

In the State of Pennsylvania:

Cameron County. Jefferson County.  
Clarion County. Lawrence County.  
Clearfield County. McKean County.  
Crawford County. Mercer County.  
Elk County. Potter County.  
Erie County. Venango County.  
Forest County. Warren County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 18, 1970.

JOHN T. MIDDLETON,  
*Commissioner, National Air  
Pollution Control Administration.*

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,  
*Secretary.*

[F.R. Doc. 70-16679; Filed, Dec. 10, 1970;  
8:47 a.m.]

## Title 43—PUBLIC LANDS: INTERIOR

### Chapter II—Bureau of Land Management, Department of the Interior

#### APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4962]

#### ALASKA

#### Modification of Public Land Order No. 4582

Whereas, Public Land Order No. 4582 of January 17, 1969, withdrawing public lands in Alaska under the jurisdiction of the Secretary of the Interior for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska, will expire at 12 midnight, A.S.T., December 31, 1970, and

Whereas, legislation to determine and protect the rights of the native Aleuts, Eskimos, and Indians of Alaska presently pending in the Congress of the United States will not become law before the present expiration date of Public Land Order No. 4582.

Now therefore, by virtue of the authority vested in the President by section 1 of the act of June 25, 1910 (36 Stat. 847, 43 U.S.C. 141), as amended, and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), Public Land Order No. 4582 is hereby modified and amended to read as follows:

1. Subject to valid existing rights, and subject to the conditions hereinafter set forth, all public lands in Alaska which are unreserved or which would otherwise become unreserved prior to the expiration of this order, are hereby withdrawn from all forms of appropriation and disposition under the public land laws (except locations for metalliferous minerals), including selection by the State of Alaska pursuant to the Alaska Statehood Act (72 Stat. 339), and from leasing under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181, et seq.), as amended, and reserved under the jurisdiction of the Secretary of the Interior for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska. The withdrawal and reservation created by this order shall expire at 12 (midnight), prevailing Alaska time, June 30, 1971 or 12 (midnight), prevailing Alaska time, on the day legislation for the determination and protection of the rights of the native Aleuts, Eskimos, and Indians of Alaska shall become law, whichever shall occur first. Said date shall be hereinafter referred to as the "Expiration Date".

2. Unless otherwise required by law, all applications for leases, licenses, permits or land title transfers which were pending before the Department of the Interior on January 17, 1969, will be given the same status and consideration beginning at 12 (noon), prevailing Alaska time, on the first business day following the 90th day after the Expiration Date, as though there had been no intervening period, unless previously recalled by the applicant.

3. From the Expiration Date until 12 (noon), prevailing Alaska time, on the first business day following the 90th day after the Expiration Date, the State of Alaska shall, subject to the provisions of paragraph 2 of this order, have a preferred right of selection as provided by section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 341). Any public lands not selected by the State and not otherwise reserved shall at 12 (noon), prevailing Alaska time, on the first business day following the 90th day after the Expiration Date, become subject to appropriation under the public land laws, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law.

4. Applications filed by the State of Alaska before January 4, 1969, to select unreserved public lands under the Statehood Act, which at the time of such filings were embraced in leases, licenses,

permits or contracts issued pursuant to the Mineral Leasing Act of 1920, supra, or the Alaska Coal Leasing Act of 1914 (38 Stat. 741; 48 U.S.C. 432), as amended, and applications filed by the State of Alaska before December 13, 1968, to select other unreserved lands under the Statehood Act, shall be processed in accordance with the policies and procedures of this Department designed to protect the rights of the native Aleuts, Eskimos and Indians of Alaska, which were in effect on January 17, 1969.

5. This order may be modified or amended by the Secretary of the Interior or his delegate upon the filing of an application which demonstrates that such modification or amendment is required for the construction of public or economic facilities in the public interest. Applications for such modification or amendment should be filed in the land office of the Bureau of Land Management, Anchorage, Alaska.

6. Other provisions of this order to the contrary notwithstanding, applications for patents and allotments may be processed to conclusion in the following cases where the conditions herein stated are met and there has been compliance with all other applicable provisions of law:

a. Homesteads, pursuant to the Act of May 14, 1898 (30 Stat. 409; 48 U.S.C. 371, et seq.), as amended, where valid settlement was made prior to December 14, 1968;

b. Native allotments, pursuant to the Act of May 17, 1906 (34 Stat. 197; 48 U.S.C. 357, 357a, 357b), as amended, where occupation was commenced prior to December 14, 1968;

c. Trade or manufacturing sites, homesites or headquarters sites, pursuant to the Act of May 14, 1898 (30 Stat. 431; 48 U.S.C. 461, et seq.), as amended, where the claim was initiated prior to December 14, 1968.

7. All prior modifications and amendments of Public Land Order No. 4582 are hereby continued in force and effect until the Expiration Date.

8. This modification of Public Land Order No. 4582 shall become effective upon publication in the FEDERAL REGISTER.

FRED J. RUSSELL,  
*Acting Secretary of the Interior.*

DECEMBER 8, 1970.

[F.R. Doc. 70-16705; Filed, Dec. 10, 1970;  
8:49 a.m.]

## Title 45—PUBLIC WELFARE

### Subtitle A—Department of Health, Education, and Welfare, General Administration

#### PART 61—CONTRACTS AND GRANTS FOR PLANNING AND EVALUATION OF OFFICE OF EDUCATION PRO- GRAMS

The regulations set forth below apply to contracts and grants awarded pursuant to Title IV, section 402 (20 U.S.C.

1222), of the Elementary and Secondary Education Amendments of 1967 (P.L. 90-247), except for such contracts and grants as are awarded under the regulations in 45 CFR Part 107.

Part 61 reads as follows:

- Sec.
- 61.1 Definitions.
- 61.2 Purpose.
- 61.3 Criteria for selection.
- 61.4 Terms and conditions of awards.

**AUTHORITY:** The provisions of this Part 61 issued under 20 U.S.C. 1222. Interpret or apply 20 U.S.C. 1221-1222.

**§ 61.1 Definitions.**

As used in this part:

(a) "Act" means the Elementary and Secondary Education Amendments of 1967 (Public Law 90-247), as amended.

(b) "Evaluation" means determining the extent to which management and program objectives are being achieved, using measures of efficiency and effectiveness to compare results with predetermined standards.

(c) "Planning" means a series of activities involving assessing needs, defining objectives, identifying problems, establishing priorities, examining alternative solutions, selecting possible approaches, and formulating action programs, including strategies for their evaluation, to achieve specified goals.

**§ 61.2 Purpose.**

Funds under this part may be used by the Secretary of Health, Education, and Welfare to enter into contracts with and award grants to agencies, organizations, institutions, or individuals, and for other expenditures, for the purpose of (a) planning for the succeeding fiscal year programs or projects for which the U.S. Commissioner of Education has responsibility for administration as provided in section 401 of the Act, or (b) evaluation of programs or projects for which the U.S. Commissioner of Education has responsibility for administration as provided in section 401 of the Act. (20 U.S.C. 1221-1222)

**§ 61.3 Criteria for selection.**

The Secretary will enter into contracts and award grants, on the basis of proposals submitted in such form and containing such information as he may from time to time require, according to the following criteria: (a) The technical quality and economic efficiency of the proposal, (b) the relevance of the prior experience of the applicant and the applicant's principal staff, (c) the applicant's demonstrated expertise in the specific educational area to be investigated and in planning and evaluation activities in general, (d) the applicant's record of performance on prior Federal contracts and grants, particularly those awarded by the Office of Education, and (e) the applicant's knowledge and understanding of any social or minority-group problems which may be involved in the particular activity to be undertaken.

**§ 61.4 Terms and conditions of awards.**

Each contract or grant awarded under this part will set forth the time period of the award, the expenditures which may be incurred, the reports which must be filed, and the other terms and conditions upon which the award is made.

**Effective date.** These regulations shall be effective 30 days after publication in the FEDERAL REGISTER.

Dated: September 30, 1970.

T. H. BELL,  
Acting Commissioner of Education.

Approved: November 5, 1970.

ELLIOT L. RICHARDSON,  
Secretary of Health,  
Education, and Welfare.

[F.R. Doc. 70-16674; Filed, Dec. 10, 1970;  
8:46 a.m.]

**Chapter I—Office of Education, Department of Health, Education, and Welfare**

**PART 131—COLLEGE LIBRARY RESOURCES PROGRAM UNDER TITLE II—A, HIGHER EDUCATION ACT OF 1965, AS AMENDED**

**Miscellaneous Amendments**

Part 131 of Title 45 CFR is hereby amended as follows:

1. Paragraph (a) of § 131.7 is amended to read as follows:

**§ 131.7 Content of applications.**

(a) *Applications for a basic grant.* All applications for a basic grant shall contain information sufficient to enable the Commissioner to determine—

(1) The eligibility of the applicant pursuant to § 131.5 and the Civil Rights Regulation in Part 80 of this title;

(2) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for all library purposes an amount not less than the average annual amount it expended for such library purposes during the fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(3) That the applicant will expend for all library purposes an amount (from funds other than funds received under this part) equal to not less than the amount of such grant;

(4) That the applicant will expend during the fiscal year for which the grant is requested (from funds other than funds received under this part) for library materials an amount not less than the average amount it expended for such materials during fiscal years 1964 and 1965 or during the 2 fiscal years preceding the fiscal year for which the grant is requested, whichever is the lesser;

(5) That the applicant will comply with the requirements in §§ 131.15, 131.16, and 131.17 relating to fiscal accounting and auditing procedures, retention of records and reports.

(6) That, except for new institutions of higher education, the applicant will include in his application the information required in subparagraphs (4), (5), and (6) of paragraph (b) of this section. (20 U.S.C. 1022)

2. Section 131.8 is amended to read as follows:

**§ 131.8 Criteria for review of applications for supplemental grants.**

Except for applications for basic grants to new institutions of higher education, the following criteria will be applied by the Commissioner in approving applications for basic and supplemental grants:

(a) Degree of deficiency in the number of volumes of the applicant's library in relation to the present, and expected increase in, student enrollment and the type of institution or branch applying for a grant;

(b) Participation in other Federal programs aiding disadvantaged students;

(c) Degree of economic disadvantage of students enrolled;

(d) Recency of the establishment of the library collection. (20 U.S.C. 1023)

3. Section 131.9 is amended to read as follows:

**§ 131.9 Criteria for review of applications for special purpose grants.**

The following criteria will be applied by the Commissioner in approving applications for special purpose grants:

(a) *Type A grant.* (1) Location in a community characterized by significant social and economic deprivation;

(2) Location in a designated Model Cities area;

(3) Number of economically disadvantaged students;

(4) Other demonstrated special needs;

(5) Use of Federal funds to meet special needs.

(b) *Type B grant.* (1) Existence of a comprehensive collection which meets special needs of other institutions in communities characterized by social and economic deprivation;

(2) Availability of a published catalog of, or other guide to, such collection;

(3) Extent to which such collection will be made available;

(4) Use of Federal funds to meet special needs.

(c) *Type C grant.* (1) Number and type of member institutions in the combination;

(2) Availability of a published catalog of, or other guide to, the special collection;

(3) Adequacy of staff, equipment, and facilities;

(4) Capability to continue the program of the combination;

## RULES AND REGULATIONS

(5) Coordination with other Federal programs;

(6) Use of Federal funds to meet special needs.

(20 U.S.C. 1024)

*Effective date.* This regulation is effective 30 days after publication in the FEDERAL REGISTER.

Dated: October 22, 1970.

T. H. BELL,  
*Acting U.S.  
Commissioner of Education.*

Approved: November 5, 1970.

ELLIOT L. RICHARDSON,  
*Secretary of Health,  
Education, and Welfare.*

[F.R. Doc. 70-16675; Filed, Dec. 10, 1970;  
8:47 a.m.]

# Proposed Rule Making

## CIVIL AERONAUTICS BOARD

I 14 CFR Parts 302, 376 I

[Docket No. 22567; PDR-30, SPDR-21]

### SERVICE ON AFFECTED COMMUTER AIR CARRIERS

#### Notice of Proposed Rule Making

DECEMBER 8, 1970.

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments to Part 302 of its Procedural Regulations and Part 376 of its Special Regulations (14 CFR Parts 302, 376) to require service of applications for exemptions and applications for amendment of flight patterns of certificated helicopter carriers on affected commuter air carriers as defined in Part 298 of the Board's economic regulations (14 CFR Part 298).

The principal features of the proposed amendment are described in the Explanatory Statement set forth below and the proposed amendment is set forth in the proposed rule. The amendment is proposed under the authority of sections 204 and 1001 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 788, 49 U.S.C. 1324, 1481).

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before January 7, 1971, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, DC upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,  
Secretary.

*Explanatory statement.* The National Air Transportation Conferences, Inc. (NATC), a trade association of air taxi operators which are authorized to perform air transportation under Part 298 of the Board's economic regulations (14 CFR Part 298), has petitioned the Board to amend Rule 403 of Part 302 (Rules of Practice in Economic Proceedings) and Part 376 of the Special Regulations (Amendment of Flight Patterns of Helicopter Operators) so as to require service of applications for exemption under Subpart D of Part 302 and applications for amendments of flight patterns by certificated helicopter carriers under Part 376 upon air taxi operators which perform regular service to a point or

points involved in such applications. According to NATC, the purpose of the rule is to insure that all notices, actions and applications for exemption under Subpart D of Part 302 and all applications and other documents filed under Part 376 be served upon any air taxi operator "which is providing regular service to any point involved in any such application, pursuant to schedules published in or as otherwise noted in the Official Airline Guide." In support of this request, NATC asserts that an air taxi operator or commuter air carrier which is providing regular service pursuant to published timetables to points involved in an exemption application should have notice and an opportunity to be heard with respect to such exemption application. It is claimed that such a service requirement would also provide the Board with pertinent information without at the same time imposing an undue burden upon any carrier.

For similar reasons, NATC seeks amendment of the service provisions of Part 376 pertaining to amendment of flight service patterns of certificated helicopter carriers. It maintains that commuter air carriers providing scheduled service between points within the helicopter exemption areas of Los Angeles, San Francisco, Chicago, and New York have, to varying degrees, a very real interest in receiving reasonable notice of proposed changes in authorized flight patterns of certificated helicopter carriers. It requests that the rule be amended so as to require service of applications for flight pattern amendments filed under Part 376 upon "any commuter air carrier which is rendering regular service to any point involved in the application, and/or to or from the terminal airports of Los Angeles, San Francisco, Chicago, and New York/Newark, and whose schedules are published in the Official Airline Guide."

No opposition has been expressed to the application for amendment of Part 302. However, New York Airways, Inc. (NYA) and Los Angeles Airways, Inc. (LAA), certificated helicopter carriers, oppose the petition for rule making insofar as it seeks amendment of Part 376.<sup>1</sup> NYA asserts that a similar requirement for amendment of the service provisions of Part 376 was made by Chatham Airlines (air taxi) in 1968 and denied by the Board on February 10, 1969.<sup>2</sup> It states that the reason given for the Board's action was the pending rule making proceeding (EDR-154) proposing to amend Part 298 in order to reassess the competitive relationships between the certificated helicopter carriers and the air taxi

<sup>1</sup> Golden West Airlines, Inc., an air taxi operator, filed an answer in support of NATC's petition for rule making.

<sup>2</sup> Order 69-2-37.

operators.<sup>3</sup> Hence, according to NYA, all of the air taxi operators including NATC were on notice that this issue would be considered in the rule making proceeding, and if they failed to raise this issue in that proceeding, then they waived their rights and should not be permitted to argue the same issue in this proceeding.<sup>4</sup> NYA also asks that Part 376 not be made more stringent on the certificated helicopter carriers, but that the part be repealed as no longer necessary.<sup>5</sup>

LAA adds that, although the Board requires air taxi operators to give notice to the certificated helicopter carriers before instituting regular service in markets authorized to be served by certificated helicopter carriers, that does not warrant imposing a counterpart notice requirement on certificated helicopter carriers which file amendments of flight patterns affecting points already served on a regular basis by air taxi operators. It maintains that the Board imposed the notice requirement on air taxi operators so as to give certificated helicopter carriers time to react and preserve the competitive protection afforded by Part 298 and to insure that there would be no dispute as to the date the air taxi operator commenced service, but that there is no need for an air taxi operator to receive notice of the planned operations of a certificated helicopter carrier.

For the reasons set forth in the petition of NATC, we tentatively conclude that a commuter air carrier (as defined in Part 298) should be served with applications for exemptions under Subpart D of Part 302 and applications for amendment of flight patterns under Part 376

<sup>3</sup> That rule making proceeding was terminated by a final rule adopting the proposed rule with modifications. ER-637, adopted Aug. 19, 1970, 35 F.R. 13426, 13725; and ER-643, adopted Aug. 31, 1970, 35 F.R. 13983.

<sup>4</sup> Golden West disputes this contention and maintains that the Board in Order 69-2-37 did not imply that the service-of-documents issue was embraced in the then pending rule making proceeding involving helicopter carriers.

<sup>5</sup> In support, NYA states that the provisions of Part 376 requiring filing of a "flight pattern amendment" were instituted at a time when the certificated carriers were receiving subsidy; their basic purpose was not to provide notice or protection to competing carriers, but to protect the Federal taxpayers from unwarranted increases in Federal subsidy; therefore the provisions of this regulation are no longer necessary with the elimination of Federal subsidy. NYA misconceives the basic purpose of Part 376, which was to secure uniformity among helicopter air carriers as to form, contents and time of filing their applications for flight pattern amendments, which they were required to do as a condition to their operations under area exemption authority (see SPR-5, adopted Oct. 17, 1960). No showing has been made that the rule is no longer necessary to achieve this purpose, and NYA's request is denied.

when it has provided regular service to a point or points involved in the exemption application or the application for amendment of flight patterns. We also propose to make the new service requirement in Part 376 applicable to any commuter carrier which serves regularly one of the terminal airports of Los Angeles, San Francisco, Chicago, or New York/Newark if such terminal point is involved in the application. Regular service means service on a regularly scheduled basis with a minimum of five round trips per week to such point pursuant to published schedules.<sup>6</sup> Air taxi operators providing such service could be directly affected by such applications of certificated carriers. This notice requirement is a simple one and will not in our opinion impose any undue burden or hardship on any carrier.

We are not persuaded by NYA's argument that the issue of altering the service requirements of Part 376 was settled in the rule making proceeding initiated by EDR-154. The fact of the matter is that the issue of altering the service requirements of Part 376 was not an issue in the Part 298 rule making proceeding nor was the issue ever considered there. In Order 69-2-37, the Board stated that in light of the pendency of the rule making proceeding relating to § 298.21 (b) and (d), it saw no occasion to promulgate a special regulation altering the service requirements of Part 376. While the Board stated that Chatham et al. would, of course, be permitted to participate in the rule making proceeding and would be entitled to present their views, the views referred to concerned § 298.21 (b) and (d), not Part 376. Nor was revision of Part 376 ever suggested by any party in that proceeding. In sum, contrary to NYA's position, this matter was not settled by the Board in that rule making proceeding and petitioners have not waived their rights to seek amendment of Part 376 as requested in their petition.

**Proposed rules.** It is proposed to amend Parts 302 and 376 of the Board's regulations (14 CFR Parts 302, 376) as follows:

**Part 302. 1.** Amend § 302.403(b) to read as follows:

§ 302.403 Service of application.

(b) *Persons to be served.* Except in the case of an application for an exemption from sections 403 and 404 of the Act or an application for exemption which will permit the applicant to render irregular services only other than between specified points, a copy of an application

shall be served on the following parties who shall be presumed to have an interest in the subject matter of the application: (1) Any air carrier which is authorized to render regular service to any point involved in the application; (2) any person whose application for a certificate of public convenience and necessity, or for an exemption, authorizing regular service to or from any such point has been filed with, and has not finally been disposed of by, the Board; (3) the chief executive of any State, territory, or possession of the United States in which any such point is located; (4) the chief executive of the city, town, or other unit of local government at any such point located in the United States or any territory or possession thereof; and (5) any commuter air carrier which operates pursuant to Part 298 of this chapter or other exemption authority, which provides at least five round trips per week between two or more points one of which is involved in such application and which publishes flight schedules filed with the Board pursuant to § 298.61 of this chapter which include service to the point involved in such application.

**Part 376. 2.** Amend § 376.4 to read as follows:

§ 376.4 Filing and service.

Application for flight pattern amendments shall be filed with the Docket Section of the Board not later than 20 days prior to the desired effective date. Prior to or coincident with the filing of an amended flight pattern application which proposes suspension of passenger service to any point, the carrier shall serve a notice of such filing together with a copy of the proposed amended flight pattern upon the chief executive of the city, town, or other unit of local government at each point regularly receiving passenger service, at which suspension of such service is proposed. Such service shall also be made upon (a) any local service air carrier which serves any point at which it is proposed to terminate, suspend or inaugurate passenger service; and (b) any commuter air carrier (as defined in Part 298 of this chapter) which operates pursuant to Part 298 of this chapter or other exemption authority, which provides at least five round trips per week between two or more points at one of which points it is proposed to terminate, suspend or inaugurate passenger service and/or to the terminal airports of Los Angeles, San Francisco, Chicago, or New York/Newark, as the case may be, and which publishes flight schedules filed with the Board pursuant to § 298.61 of this chapter which include service to such a point. If proposed flight patterns involve property and mail carriage, such service shall be made upon the Postmaster General, marked for the attention of the Deputy Assistant Postmaster General for Logistics, Bureau of Operations. Any such person may, within 10 days after such service, file with the Board and serve upon the carrier, a statement of position with respect to the proposed service pattern: *Provided*, That any person entitled to

notice under the provisions of this part may, in writing, waive such notice and recommend that the Board approve the amended flight pattern as proposed.

[F.R. Doc. 70-16696; Filed, Dec. 10, 1970; 8:48 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[ 45 CFR Part 249 ]

### AMOUNT, DURATION, AND SCOPE OF MEDICAL ASSISTANCE

#### Early and Periodic Screening, Diagnosis, and Treatment of Individuals Under Age 21

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations relate to early and periodic screening, diagnosis, and treatment of individuals under 21 years of age provided for under a State plan for medical assistance under title XIX of the Social Security Act.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201, within a period of 30 days from date of publication of this notice in the *FEDERAL REGISTER*.

The proposed regulations are to be issued under section 1102, 49 Stat. 647, 42 U.S.C. 1302.

Dated: October 30, 1970.

JOHN D. TWINAME,  
*Administrator, Social and  
Rehabilitation Service.*

Approved: December 3, 1970.

ELLIOT L. RICHARDSON,  
*Secretary.*

Part 249 of Chapter II of Title 45 of the Code of Federal Regulations is amended as follows:

Section 249.10(a) is amended by redesignating subparagraphs (3) through (9), inclusive, as subparagraphs (4) through (10), inclusive, and by adding subparagraph (3) to read as follows:

§ 249.10 Amount, duration, and scope of medical assistance.

(a) \* \* \*

(3) In carrying out the requirements in subparagraphs (1) and (2) of this paragraph with respect to the item of care set forth in paragraph (b) (4) (ii) of this section, provide:

(i) For establishment of administrative mechanisms to identify available screening and diagnostic facilities, to

<sup>6</sup>We shall not require publication in the Official Airline Guide, as NATC requested, but the publication requirements of commuter air carriers in Part 298 shall apply. See 14 CFR 298.2; 298.61. It is noted that the helicopter carriers will be apprised of the schedules performed by the commuter air carriers since the latter are required by Part 298 (§ 298.21(e)) to serve notice on a certificated helicopter carrier authorized to serve the market in question before such commuter air carrier inaugurates regular service in such market. See ER-637 and ER-643, adopted Aug. 19, 1970, and Aug. 31, 1970, respectively.

assure that individuals under 21 years of age who are eligible for medical assistance receive the services of such facilities, and to provide such treatment as may be included under the State plan and as required in subdivisions (iv) and (v) of this subparagraph;

(ii) For identification of those eligible individuals who are in need of medical or remedial care and services furnished through title V grantees, and for assuring that such individuals are informed of such services and are referred to title V grantees for care and services, as appropriate;

(iii) For agreements to assure maximum utilization of existing screening, diagnostic, and treatment services provided by other public and voluntary agencies such as child health clinics, OEO Neighborhood Health Centers, day care centers, nursery schools, school health programs, family planning clinics, maternity clinics, and similar facilities;

(iv) That the full amount of inpatient hospital services, outpatient hospital services, laboratory and X-ray services, and physicians' services needed by an individual receiving screening, diagnostic, and treatment services under this subparagraph will be furnished regardless of the limits otherwise imposed under the State plan on the amount of such care and services; and

(v) Effective January 1, 1971 (or earlier at the option of the State), that early and periodic screening and diagnosis to ascertain physical and mental defects, and treatment of conditions discovered regardless of the limits otherwise imposed under the State plan on the type and amount of such care and services (for which Federal financial participation is otherwise available pursuant to section 1905 of the Social Security Act), will be available to all eligible individuals under 21 years of age. If such screening, diagnosis, and treatment are not available by January 1, 1971, to all eligible individuals under 21 years of age, the State plan must provide that such services will be available to all eligible children under 6 years of age and must specify the progressive stages by which such services will be available to all eligible individuals under 21 no later than July 1, 1973.

Department's Hazardous Materials Regulations to provide a specification for a nonreusable (nonrefillable) cylinder for certain compressed gases and to eliminate existing specifications 9, 40, and 41. Also, a new paragraph (k) is proposed for addition to § 173.301 to specify that certain cylinders, including the new specification proposed herein, must be shipped in outside packagings with their valves protected.

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590. Communications received on or before March 9, 1971, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons at the Office of the Secretary, Hazardous Materials Regulations Board, both before and after the closing date for comments.

The basis for this proposal is a petition of the Compressed Gas Association, Inc., and more than 100 special permits issued during the last 12 years. In its petition, the Compressed Gas Association submitted a draft of a proposed specification designated by it as DOT-42. Since the number 42 is designated for aluminum drums, the specification designation has been changed to DOT-39.

In reviewing the proposal, the Board has concluded that adoption of this specification will eliminate any need for specifications 9, 40, and 41. Comments are invited as to continuing need for manufacture of these specifications. Existing cylinders would be authorized until there would no longer be a need for their authorization.

The proposed new specification is primarily performance oriented. There are proposed limitations as to the type of metal to be used. Design for the cylinder would be based upon the pressure of the intended contents at 130° F., described as the "test pressure". The performance pressure (burst) test, would be a function of the test pressure. The marked service pressure would be limited to a maximum of 80 percent of the test pressure. A cylinder would be marked to indicate both service and test pressures. Rather than designating these pressures according to the different types of gases authorized, the regulations in paragraphs (e) and (f) of § 173.301 would apply.

Consistent with the terms of most of the outstanding special permits, the specification would be limited to 55 pounds water capacity for service pressures of 500 p.s.i. or less, and 10 pounds water capacity for service pressures in excess of 500 p.s.i. For flammable gases, cylinder size would be limited to 75 cubic inches. The CGA petition proposed certain exemptions for safety relief devices. The Board is not proposing any exemption for relief devices for cylinders made under this specification. Further, the Board believes safety valves should be required for cylinders intended for liquefied flammable gases to reduce the hazard

of total release of contents should a cylinder accidentally be overfilled or exposed to high temperatures of short duration.

There are two major performance tests proposed; a "burst" test and a flattening (crush) test. The emphasis is placed on the "burst" test since the Board believes it the more significant and reliable of the two. A minimum burst criteria is specified plus restrictions on the allowable manner of failure. The manner of failure at burst is a basic safety consideration. In developing the testing requirements, it became evident that the imposition of test requirements on a production line from the beginning-of-forming operations could cause manufacturers some difficulty. Such a limitation is not being proposed at this time for inclusion in the definition of a lot. However, if it is determined that the proposed definition of a lot is inadequate, an appropriate change will be made to insure that tests are truly representative of the production of all cylinders.

A manufacturer's registration system is proposed as part of this Notice. At this time, it is not proposed to establish a licensing or certification scheme. As stated in § 173.24, the specification identification marking of a packaging is a certification that it complies with all specification requirements. The proposed issuance of registration numbers to manufacturers would be a ministerial function to facilitate the identification of manufacturers. Although the Board is considering licensing in this area, and others, such substantive regulations will not take place without separate rule-making action.

The Board is placing emphasis on the nonreusable limitation of this specification by proposing a penalty statement as part of the specification marking requirement. The regulations concerned with the marking "NRC" is found presently in paragraph (i) of § 173.28.

The Board agrees with the CGA proposal, as modified herein, since the proposed cylinder will be: (1) Overpacked at all times during transportation, (2) limited to noncorrosive gases, (3) nonreusable and not subject to cyclic stresses resulting from refilling, (4) equipped with safety devices, (5) made of ductile materials, and (6) the subject of continuous performance tests.

In consideration of the foregoing, the Board proposes to amend Parts 171, 173, and 178 as follows:

**I. Part 171:**

In § 171.7, paragraph (c)(12) would be added to read as follows:

§ 171.7 Matter incorporated by reference.

(c) \* \* \* \* \*  
(12) Aluminum Association: The Aluminum Association, 420 Lexington Avenue, New York, NY 10017.

**II. Part 173:**

(A) In § 173.34 paragraph (d)(1) Note 1 and (d)(2) would be amended to read as follows:

[F.R. Doc. 70-16680; Filed, Dec. 10, 1970; 8:47 a.m.]

**DEPARTMENT OF  
TRANSPORTATION**

Hazardous Materials Regulations  
Board

[ 49 CFR Parts 171, 173, 178 ]

[Docket No. HM-69; Notice 70-25]

**TRANSPORTATION OF HAZARDOUS  
MATERIALS**

**Cylinder Specifications**

The Hazardous Materials Regulations Board is considering amending the

§ 173.34 Qualification, maintenance, and use of cylinders.

- (d) \* \* \*
- (1) \* \* \*

NOTE 1: Safety relief devices are required on specs. 9, 40, 41, and 39 (§ 178.65 of this chapter) cylinders. Metal safety relief valves are required on specification 39 cylinders used for liquefied flammable gases. Fusible safety relief devices are not authorized on specification 39 cylinders.

(2) Except for specification 39 cylinders and for acetylene in solution, safety relief devices are not required on cylinders charged with nonliquefied gas under pressure of 300 p.s.i. or less at 70° F.

(B) In § 173.201, paragraph (h) table would be amended by adding "DOT-39" in the last column following "DOT-38"; paragraph (k) would be added to read as follows:

§ 173.301 General requirements for shipment of compressed gases in cylinders.

(k) Outside packagings. Specifications 2P, 2Q, 3E, 3HT, 4D, 4DA, 4DS, 9, 39, 40, and 41 must be shipped in strong outside packagings.

(1) Outside packagings must provide protection against accidental functioning of and damage to valves under conditions normally incident to transportation.

(C) In § 173.302 paragraph (a) (4) would be added to read as follows:

§ 173.302 Charging of cylinders with nonliquefied compressed gases.

(4) Specification 39 (§ 178.65 of this chapter). For flammable gases, internal volume must not exceed 75 cubic inches.

(D) In § 173.304 paragraph (a) (1) would be amended; paragraph (a) (2) table miscellaneous entries and Note 8 would be amended and Note 9 would be added; paragraph (d) (3) (i) except Note 1 would be amended to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(1) Specification 3, 3A, 3AA, 3B, 3BN, 3D, 3E, 4, 4A, 4B, 4BA, 4B-ET, 4BW, 9, 25, 26, 28, 39, 40, or 41, (§§ 178.36, 178.37, 178.38, 178.39, 178.41, 178.42, 178.48, 178.49, 178.50, 178.51, 178.55, 178.61, 178.63, 178.65, 178.66, 178.67 of this chapter), except that specifications 9, 39, 40, and 41 containers must not be charged and shipped with mixtures containing pyrophoric liquids carbon bisulfide (disulfide), ethyl chloride, ethylene oxide, nickel carbonyl, spirits of nitroglycerin, or poisonous materials (class A, B, or C), unless specifically prescribed in this part.

(i) For flammable gases, the internal volume of a specification 39 cylinder must not exceed 75 cubic inches.

<sup>1</sup> Use of existing cylinders authorized, but new construction not authorized.

Kind of gas	Maximum permitted filling density (see Note 1)	Containers marked as shown in this column or of the same type with higher service pressure must be used except as provided in § 173.34 (a), (b), § 173.301 (d) (see notes following table).
Carbon dioxide, liquefied (See Notes 3, 4, 7, and 8)	68	DOT-3A1800; DOT-3AA1800; DOT-3; DOT-3E1800; DOT-3HT2000; DOT-39
Carbon dioxide-nitrous oxide mixture (see Notes 7 and 8)	68	DOT-3A1800; DOT-3AA1800; DOT-3; DOT-3E1800; DOT-3HT2000; DOT-39
Cyclopropane (see Notes 8 and 9)	55	DOT-3A225; DOT-3AA225; DOT-3B225; DOT-3E225; DOT-3HT2000; DOT-39
Dichlorodifluoromethane (see Note 8)	119	DOT-3A225; DOT-3AA225; DOT-3B225; DOT-3E225; DOT-3HT2000; DOT-39
Dichlorodifluoromethane and difluoroethane mixture (constant boiling mixture) (see Note 8)	Not liquid full at 130° F.	DOT-3A240; DOT-3AA240; DOT-3B240; DOT-3E1800; DOT-3HT2000; DOT-39
Difluoromonochloroethane (see Note 8)	100	DOT-3A160; DOT-3AA160; DOT-3B160; DOT-3E1800; DOT-3HT2000; DOT-39
Ethane (see Notes 8 and 9)	35.8	DOT-3A1800; DOT-3AA1800; DOT-3; DOT-3E1800; DOT-39
Ethane (see Notes 8 and 9)	36.8	DOT-3A2000; DOT-3AA2000; DOT-39
Ethylene (see Notes 8 and 9)	31.0	DOT-3A1800; DOT-3AA1800; DOT-3; DOT-3E1800; DOT-39
Ethylene (see Notes 8 and 9)	32.5	DOT-3A2000; DOT-3AA2000; DOT-39
Ethylene (see Notes 8 and 9)	35.5	DOT-3A2400; DOT-3AA2400; DOT-39
Liquefied nonflammable gases, liquids other than those classified as flammable, corrosive, or poisonous, and mixtures or solutions thereof, charged with nitrogen, carbon dioxide, or air (see Notes 7 and 8)	Not liquid full at 130° F.	DOT-3A160; DOT-3AA160; DOT-3B160; DOT-3E1800; DOT-3HT2000; DOT-39
Monochlorodifluoromethane (see Note 8)	105	DOT-3A240; DOT-3AA240; DOT-3B240; DOT-3E1800; DOT-3HT2000; DOT-39
Monochloropentafluoroethane (see Note 8)	110	DOT-3A225; DOT-3AA225; DOT-3B225; DOT-3E1800; DOT-3HT2000; DOT-39
Monochlorotrifluoromethane (see Note 8)	100	DOT-3A1800; DOT-3AA1800; DOT-3; DOT-3E1800; DOT-39
Nitrous oxide (see Notes 7 and 8)	63	DOT-3A1800; DOT-3AA1800; DOT-3; DOT-3E1800; DOT-3HT2000; DOT-39
Sulfur dioxide (see Note 8)	125	DOT-3A225; DOT-3AA225; DOT-3B225; DOT-3E225; DOT-3HT2000; DOT-39

NOTE 8: See § 173.301 (k).

NOTE 9: When used for shipment of flammable gases, the internal volume of a specification 39 cylinder must not exceed 75 cubic inches.

(d) \* \* \*

(3) \* \* \*

(i) Specification 3, 3A, 3AA, 3B, 3E, 4A, 4B, 4BA, 4B240ET, 4BW240, 4B240X, 4B240FLW, 4E, 4, 9, 25, 26, 38, 39, or 41<sup>1</sup> (§§ 178.36, 178.37, 178.38, 178.42, 178.49, 178.50, 178.51, 178.55, 178.61, 178.54, 178.68, 178.48, 178.63, 178.65, 178.67, of this chapter. The internal volume of a specification 39 cylinder must not exceed 75 cubic inches.

III. Part 178:

(A) In Part 178 table of contents §§ 178.63, 178.66, and 178.67 would be canceled; § 178.65 would be added as follows:

Sec. 178.65 Specification 39; nonreusable (non-refillable) cylinder.

§ 178.63 [Canceled]

(B) Section 178.63 would be canceled.

(C) Section 178.65 would be added to read as follows:

§ 178.65 Specification 39; nonreusable (nonrefillable) cylinder.

§ 178.65-1 Compliance.

Each cylinder must meet the applicable requirements of § 173.24 of this chapter.

§ 178.65-2 Type, size, service pressure, and test pressure.

(a) Type: Each cylinder must be of seamless, welded, or brazed construction. Spherical pressure vessels are authorized and covered by the references to cylinders in this specification.

(b) Size limitation: Maximum water capacity may not exceed:

(1) 55 pounds (1,526 cubic inches) for a service pressure of 500 p.s.i.g. or less, and

(2) 10 pounds (277 cubic inches) for a service pressure in excess of 500 p.s.i.g.

(c) Service pressure: The marked service pressure may not exceed 80 percent of the test pressure.

(d) Test pressure: The test pressure is the pressure of contents at 130° F. or 180 p.s.i.g. whichever is greater.

(e) The term "pressure of contents" as used in this specification means the total pressure of all the materials to be shipped in the cylinder.

§ 178.65-3 Inspection by whom and where.

Inspection of each cylinder must be performed by a competent inspector with chemical analyses and tests performed within limits of the United States. Disinterested inspectors, acceptable to the Bureau of Explosives, are required for cylinders having marked service pressures higher than 900 p.s.i.g.

§ 178.65-4 Duties of inspector.

(a) The inspector must determine that all material used complies with the requirements of this specification.

(b) The inspector must verify compliance with the requirements of subsection 5 of this section by making a chemical analysis or obtaining a certified chemical analysis from the material manufacturer for each heat of material (ladle analysis acceptable). If an analysis is not provided by the material manufacturer, a sample from each coil, sheet, or tube must be analyzed.

(c) The inspector must determine that each cylinder is made and marked in compliance with this specification by:

- (1) Complete internal and external inspection;
- (2) Verification of proper heat treatment (if any);
- (3) Selection of samples to be tested;
- (4) Witnessing all tests; and
- (5) By preparation of required report.

§ 178.65-5 Material; steel or aluminum.

(a) Steel: The steel analysis must conform to the following:

	Ladle analysis	Check analysis
Carbon, maximum percent.....	0.12	0.15
Phosphorus, maximum percent.....	0.04	0.05
Sulfur, maximum percent.....	0.05	0.06

(b) Aluminum: Aluminum not authorized for service pressures in excess of 500 p.s.i.g. Analysis of aluminum must conform to Aluminum Association standards designated for alloys 1100, 1170, 3003, 5052, 5086, 5154, 6061, and 6063 specified in its publication entitled "Aluminum Standards and Data" (1970-71 edition dated December 1969).

(c) Material with seams, cracks, laminations, or other injurious defects not permitted.

(d) Material used must be identified by any suitable method.

§ 178.65-6 Manufacture.

(a) General manufacturing requirements are as follows:

- (1) Dirt and scale must be removed prior to inspection and processing.
- (2) The surface finish must be uniform and reasonably smooth.
- (3) Inside surfaces must be clean, dry, and free of loose particles.
- (4) No defect of any kind is permitted if it is likely to weaken a finished cylinder.

(b) Requirements for seams:

- (1) Brazing is not authorized on aluminum cylinders.
- (2) Brazing material must have a melting point of not lower than 1,000° F.
- (3) Brazed seams must be assembled with proper fit to insure complete penetration of the brazing material throughout the brazed joint.

(4) Minimum width of brazed joints must be at least four times the thickness of the shell wall.

(5) Brazed seams must have design strength equal to or greater than 1.5 times the minimum strength of the shell wall.

(6) Welded seams must be properly aligned and welded by a method that provides clean, uniform joints with adequate penetration.

(7) Welded joints must have strength equal to or greater than the minimum strength of the shell material.

(c) Attachments to the cylinder are permitted by any means which will not be detrimental to the integrity of the cylinder.

§ 178.65-7 Wall thickness.

(a) The minimum wall thickness must be such that the wall stress at test pressure does not exceed the yield strength of the material of the finished cylinder wall.

(b) Calculation of the stress for cylinders must be made by the formula:

$$S = \frac{P(1.3D^2 + 0.4d^2)}{D^2 - d^2}$$

where

- S=Wall stress, in p.s.i.;
- P=Test pressure;
- D=Outside diameter, in inches;
- d=Inside diameter, in inches.

(c) Calculation of the stress for spheres must be made by the formula:

$$S = \frac{PD}{4t}$$

where

- S=Wall stress, in p.s.i.;
- P=Test pressure;
- D=Outside diameter, in inches;
- t=Minimum wall thickness, in inches.

§ 178.65-9 Openings.

(a) Openings are permitted in heads only.

(b) All openings and their reinforcements must be within an imaginary circle, concentric to the axis of the cylinder. The diameter of the circle may not exceed 80 percent of the outside diameter of the cylinder. The plane of the circle must be parallel to the plane of a circumferential weld and normal to the long axis of the cylinder.

(c) Unless a head has adequate thickness, each opening must be reinforced by a securely attached fitting, boss, pad, collar, or other suitable means.

§ 178.65-10 Safety devices.

Safety devices must meet the requirements of § 173.34(d) of this chapter.

§ 178.65-11 Pressure tests.

(a) Each cylinder must be tested at an internal pressure of at least the test pressure and must be held at that pressure for at least 30 seconds.

(1) The leakage must be conducted by submersion under water or by some other method that will be equally sensitive.

(2) If the cylinder leaks, evidences visible distortion, or any other defect, while under test, it must be rejected.

(b) One cylinder taken from the beginning of each lot, and one from each 1,000 or less successively produced within the lot thereafter, must be hydrostatically tested to destruction. The entire lot must be rejected if—

- (1) A failure occurs at a gauge pressure less than 2.0 times the test pressure,
- (2) A failure initiates in a weld or the heat affected zone thereof;
- (3) A failure is other than in the sidewall of a cylinder longitudinal with its long axis, or

(4) In a sphere, a failure occurs in any opening, reinforcement, or at a point of attachment.

(c) A "lot" is defined as the quantity of cylinders successively produced per production shift (not exceeding 10 hours), having identical size, design, construction, material, heat treatment, finish, and quality.

§ 178.65-12 Flattening test.

(a) One cylinder must be taken from the beginning of production of each lot (as defined above) and subjected to a flattening test.

(1) The flattening test must be made on a cylinder that has been tested at test pressure.

(2) A ring taken from a cylinder may be flattened as an alternative to a test on a complete cylinder. A circumferential body weld, when present, must be included at the midwidth of a test ring.

(3) The flattening must be between 60° included-angle, wedge shaped knife edges, rounded to a 0.5 inch radius.

(4) Cylinders and test rings must not crack when flattened so that their outer surfaces are not more than six times wall thickness apart when made of steel or not more than 10 times wall thickness apart when made of aluminum.

(b) If any cylinder or ring cracks when subjected to the specified flattening test, the lot of cylinders represented by the test must be rejected.

§ 178.65-13 Rejected cylinders.

(a) If the cause for rejection of a lot is determinable, and if by test or inspection defective cylinders are eliminated from the lot, the remaining cylinders must be qualified as a new lot under §§ 178.65-11 and 178.65-12.

(b) Repairs to welds are permitted. Following repair, a cylinder must pass the pressure test specified in paragraph (a) of § 178.65-11.

§ 178.65-14 Marking.

(a) The markings required by this section must be durable and waterproof. The requirements of § 173.24(c)(1)(ii) and (iv) of this chapter do not apply to this section.

(b) Required markings are as follows:

- (1) DOT-39.
- (2) NRC.
- (3) The service pressure.
- (4) The test pressure.
- (5) The registration number (M\*\*\*\*) of the manufacturer.
- (6) The lot number.
- (7) The date of manufacture if the lot number does not establish the date of manufacture.
- (8) The following statement:

Federal Law Forbids Transportation if Refilled—Penalty up to \$10,000 Fine and 10 Years Imprisonment (18 U.S.C. 831-835).

(c) The markings required by paragraph (b) (1) through (5) of this section must be in numbers and letters at least 1/8-inch high and displayed sequentially. For example:

DOT-39 NRC 250/500 M11001

(d) No person may mark any cylinder with the specification identification

PROPOSED RULE MAKING

"DOT-39" unless (1) it was manufactured in compliance with the requirements of this section and (2) its manufacturer has a registration number (M\*\*\*\*) from the Office of Hazardous Materials, Department of Transportation, Washington, D.C. 20590.

§ 178.65-15 Inspector's report.

(a) The inspector's report must be retained by the manufacturer for a period of 3 years and must be available for examination by representatives of the Department.

(b) The report must be legible, and contain at least the following information:

INSPECTION REPORT COVERING THE MANUFACTURE OF SPECIFICATION DOT-39 CYLINDERS OR SPHERES

The cylinders (spheres) covered by this report were manufactured for \_\_\_\_\_ located at \_\_\_\_\_ They were manufactured by \_\_\_\_\_

located at \_\_\_\_\_ whose Department of Transportation registration number is M.\_\_\_\_\_. The cylinders are \_\_\_\_\_ inches in diameter (OD) and \_\_\_\_\_ inches in length. They have a design test pressure of \_\_\_\_\_ p.s.i.g. and a marked service pressure of \_\_\_\_\_ p.s.i.g. Each has an internal volume of \_\_\_\_\_ cubic inches (nominal).

These containers were made by process of \_\_\_\_\_

The metal used was identified by heat or analysis numbers as shown on the "Record of Chemical Analysis of Metal" attached hereto.

The metal used was verified as to chemical analysis and record thereof is attached hereto.

All material and each cylinder was inspected. All accepted material was found free from seams, cracks, laminations, and other defects which might prove injurious to the strength of the cylinder. The processes of manufacture and heat treatment (if any) were observed and found satisfactory.

My record of tests and inspections for each lot covered by this report is as follows:

Lot No.	Lot quantity	Lot tests		All cylinders	
		Burst-pressure*	Flattening test**	Pressure tests**	Visual inspection**

\*Enter the lowest actual failure pressure of all cylinders tested within the lot.  
 \*\*Enter "Pass" or "Fail".

-----  
 (Inspector's name (print)      (Inspector's signature)  
 -----  
 (Date)      (Inspector's employer  
 (Company name))

Issued in Washington, D.C., on December 4, 1970.

W. M. BENKERT,  
 Captain, U.S. Coast Guard, By  
 direction of the Commandant,  
 U.S. Coast Guard.

CARL V. LYON,  
 Acting Administrator,  
 Federal Railroad Administration.

ROBERT A. KAYE,  
 Director, Bureau of Motor Car-  
 rier Safety, Federal Highway  
 Administration.

SAM SCHNEIDER,  
 Board Member, For the  
 Federal Aviation Administration.

§ 178.66 [Canceled]

(D) Section 178.66 would be canceled.

§ 178.67 [Canceled]

(E) Section 178.67 would be canceled.

This proposal is made under the authority of sections 831-835 of title 18, United States Code, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902 (h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430 and 1472(h)).

[F.R. Doc. 70-16541; Filed, Dec. 10, 1970; 8:45 a.m.]

# Notices

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Serial No. A 5882]

#### ARIZONA

#### Notice of Classification of Public Lands for Transfer Out of Federal Ownership

DECEMBER 4, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1412), the public lands described below are hereby classified for transfer out of Federal ownership by State Indemnity Lieu Selection. The transfer will be accomplished under the authority of 43 U.S.C. 851, 852 in partial satisfaction of the school land grant to the State.

As used in this order, the term public lands means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The notice of proposed classification of these lands was published October 1, 1970 in 35 F.R. 15314. The proposal was widely publicized and comments were solicited. A number of protests were received from individuals, most of whom are members of rock collecting clubs, pointing out that lands in this area have public outdoor recreation and wildlife habitat values, and asking that these lands be retained in public ownership for public use.

The lands in question consist of a strip, 1½ to 3 miles in width, of gently sloping desert terrain along the north and east borders of Lake Havasu City. These lands are part of a block of over 6 million acres of public domain in the western Arizona deserts. Most of these public lands have similar outdoor recreation and wildlife habitat values.

The United States still owes the State of Arizona about 200,000 acres for the common school land grant. The purpose of this grant is to provide the State with lands to produce revenues for the support of schools. The Bureau of Land Management and the State Land Department are working jointly to identify those public lands with the greatest potential for development. We believe that this strip of land on the fringe of the Lake Havasu City urban area meets the criteria of providing a valuable asset for the Arizona common school fund with a minimum of conflict with the large blocks of nearby public land reserved for public use.

3. Publication of this notice has the effect of segregating the described lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, except

for applications consistent with this classification.

4. The lands are located on the north and east borders of Lake Havasu City in Mohave County, Ariz. They are described as follows:

#### GILA AND SALT RIVER MERIDIAN, ARIZONA

- T. 13 N., R. 19 W.,  
 Sec. 3, lots 1 to 4, inclusive, S½N½. and S½;  
 Sec. 4, lots 1 to 4, inclusive, S½N½. and S½;  
 Sec. 10;  
 Sec. 11, S½;  
 Sec. 12, S½;  
 Secs. 13, 14, 15, secs. 22 to 26, inclusive, and sec. 36.  
 T. 14 N., R. 19 W.,  
 Sec. 19, lots 1 to 4, inclusive, E½W½. and E½;  
 Sec. 20;  
 Sec. 27, W½;  
 Sec. 28;  
 Sec. 29, N½ and SE¼;  
 Sec. 30, lots 1 and 2, E½NW¼. and NE¼;  
 Sec. 34, W½.  
 T. 14 N., R. 20 W.,  
 Secs. 22, 23, and 24;  
 Sec. 25, N½;  
 Sec. 26, N½NE¼, N½NW¼, N½SW¼, NW¼, SW¼SW¼NW¼, N½SE¼SW¼, NW¼, W½SW¼SE¼SW¼NW¼, and NW¼SE¼NW¼;  
 Sec. 27, NW¼.

The lands described above aggregate approximately 14,281.45 acres.

5. The public lands affected by this classification are shown on maps available for inspection in the Bureau of Land Management Land Office, 230 North First Avenue, Phoenix, AZ 85025, in the Phoenix District Office, 2929 West Clarendon Avenue, Phoenix, AZ 85017, and in the office of the Kingman Resource Area, Radar Hill, Kingman, AZ 86401.

6. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

JOE T. FALLINI,  
 State Director.

[F.R. Doc. 70-16663; Filed, Dec. 10, 1970; 8:45 a.m.]

[Serial No. I-2634]

#### IDAHO

#### Notice of Classification of Public Lands for Multiple-Use Management

DECEMBER 4, 1970.

1. Pursuant to the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2410 and 2460, the public lands within the areas described below are hereby classified for multiple-use management. Publication of this notice has the effect (a) of segregating all the public land within the areas described below from appropriation under the agricultural land laws (43 U.S.C. Parts 7

and 9; 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171), and (b) of further segregating the lands described in Paragraph No. 4 of this notice from the operation of the general mining laws (30 U.S.C., Chapter 2). Except as provided in (a) and (b) above, the lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The public lands affected are located within the following described areas of Custer County, Idaho, and are shown on maps on file in the Salmon District Office, Bureau of Land Management, Salmon, Idaho, and the Idaho Land Office, Boise, Idaho.

#### BOISE MERIDIAN, IDAHO

- T. 11 N., R. 16 E.,  
 All public lands outside the National Forest Boundary.  
 T. 9 N., R. 17 E.,  
 Sec. 1, lot 4, SE¼NE¼, SE¼SW¼, SE¼;  
 Sec. 3;  
 Sec. 10, lots 1, 2, W½NE¼, W½SE¼, W½;  
 Sec. 11, W½NW¼, NW¼SW¼, SE¼NE¼, SE¼;  
 Secs. 12 and 13;  
 Sec. 14, lots 1, 2, 3, S½NE¼, SE¼NW¼, S½;  
 Sec. 15;  
 Secs. 21 and 22;  
 Sec. 23, N½;  
 Sec. 27, SW¼;  
 Sec. 28.  
 T. 10 N., R. 17 E.,  
 Secs. 13 and 14;  
 Sec. 23, E½;  
 Secs. 24 and 25;  
 Sec. 35, E½.  
 T. 11 N., R. 17 E.,  
 Secs. 1 through 21 inclusive;  
 Secs. 23 and 23;  
 Sec. 24, lot 1, NW¼SW¼, W½NW¼, E½E½;  
 Sec. 25, lots 2, 4, 6, 7, 8, 9, 12, S½N½, S½;  
 Sec. 26;  
 Sec. 27, lots 1, 5, 11, SE¼NE¼, E½SE¼, SW¼SE¼, SE¼SW¼;  
 Sec. 28, lot 10, NE¼NW¼, SW¼SW¼;  
 Sec. 29;  
 Sec. 30, lots 1, 2, 3, 4, 10, E½NW¼, NE¼;  
 Sec. 31, NE¼NE¼;  
 Secs. 32 through 36 inclusive.  
 T. 9 N., R. 18 E.,  
 Secs. 1 through 4 inclusive;  
 Sec. 5, lots 1, 2, S½N½, S½;  
 Secs. 6 through 16 inclusive.  
 T. 10 N., R. 18 E.,  
 Secs. 1 through 3 inclusive;  
 Sec. 4, lots 1, 2, 3, 4, S½N½;  
 Sec. 11;  
 Sec. 12, W½W½, E½E½;  
 Sec. 13, NW¼NW¼, E½;  
 Sec. 14;  
 Sec. 15, E½;  
 Sec. 19;  
 Secs. 22 through 36 inclusive.

- T. 11 N., R. 18 E.,  
Secs. 1 through 11 inclusive;  
Sec. 12,  $W\frac{1}{2}SW\frac{1}{4}$ ,  $E\frac{1}{2}W\frac{1}{2}$ ,  $E\frac{1}{2}$ ;  
Secs. 13, 14, and 15;  
Secs. 16 to 25 inclusive;  
Sec. 26,  $N\frac{1}{2}NW\frac{1}{4}$ ,  $SE\frac{1}{4}NW\frac{1}{4}$ ,  $NE\frac{1}{4}$ ,  $E\frac{1}{2}SE\frac{1}{4}$ ;  
Sec. 27, lots 1, 2,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}$ ,  $N\frac{1}{2}NE\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$ ,  $W\frac{1}{2}SE\frac{1}{4}$ ;  
Sec. 28;  
Sec. 29, lots 1, 3, 4, 5, 6, 7, 8,  $N\frac{1}{2}N\frac{1}{2}$ ,  $SW\frac{1}{4}$ ,  $S\frac{1}{2}SE\frac{1}{4}$ ;  
Secs. 30 through 34 inclusive;  
Sec. 35,  $SW\frac{1}{4}NW\frac{1}{4}$ ,  $NW\frac{1}{4}SW\frac{1}{4}$ ,  $S\frac{1}{2}SW\frac{1}{4}$ ,  $E\frac{1}{2}NE\frac{1}{4}$ ,  $NE\frac{1}{4}SE\frac{1}{4}$ .
- T. 12 N., R. 18 E.,  
Secs. 1 through 3 inclusive;  
Secs. 10 through 15 inclusive;  
Secs. 22 through 27 inclusive;  
Secs. 34 through 36 inclusive.
- T. 13 N., R. 18 E.,  
Secs. 1 through 3 inclusive;  
Secs. 11 through 14 inclusive;  
Secs. 23 through 26 inclusive;  
Secs. 35 and 36.
- T. 14 N., R. 18 E.,  
Secs. 1 through 3 inclusive;  
Secs. 10 through 15 inclusive;  
Secs. 22 through 27 inclusive;  
Secs. 34 through 36 inclusive.
- T. 15 N., R. 18 E.,  
All public lands outside the National Forest Boundary.
- T. 16 N., R. 18 E.,  
All public lands outside the National Forest Boundary.
- T. 9 N., R. 19 E.,  
Secs. 1 through 20 inclusive;  
Secs. 22 through 27 inclusive;  
Secs. 34 through 36 inclusive.
- T. 10 N., R. 19 E.  
T. 11 N., R. 19 E.  
T. 12 N., R. 19 E.,  
Secs. 1 through 17 inclusive;  
Sec. 18, lots 2, 3, 4, 5, 9, 11,  $SE\frac{1}{4}SE\frac{1}{4}$ ;  
Sec. 19, lots 3, 6, 7,  $E\frac{1}{2}E\frac{1}{2}$ ,  $SW\frac{1}{4}SE\frac{1}{4}$ ;  
Secs. 20 through 36 inclusive.
- T. 13 N., R. 19 E.,  
Sec. 2, lot 4;  
Secs. 5 through 8 inclusive;  
Sec. 10, lots 1, 6, 7;  
Secs. 17 through 20 inclusive;  
Sec. 21, lot 1,  $W\frac{1}{2}NW\frac{1}{4}$ ,  $NW\frac{1}{4}SW\frac{1}{4}$ ;  
Sec. 26,  $SW\frac{1}{4}$ ;  
Sec. 27,  $W\frac{1}{2}$ ,  $SE\frac{1}{4}$ ;  
Sec. 28, lots 5, 6, 7, 9,  $E\frac{1}{2}E\frac{1}{2}$ ,  $SW\frac{1}{4}SE\frac{1}{4}$ ,  $SE\frac{1}{4}SW\frac{1}{4}$ ;  
Sec. 29, lots 1, 2, 4, 5,  $W\frac{1}{2}$ ,  $W\frac{1}{2}NE\frac{1}{4}$ ,  $NW\frac{1}{4}SE\frac{1}{4}$ ;  
Secs. 30 through 36 inclusive.
- T. 14 N., R. 19 E.,  
Secs. 1 through 7 inclusive;  
Secs. 11 through 14 inclusive;  
Secs. 18 and 19;  
Sec. 20, lots 3, 4,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}$ ;  
Secs. 23 and 24;  
Sec. 25,  $N\frac{1}{2}NE\frac{1}{4}$ ,  $NE\frac{1}{4}NW\frac{1}{4}$ ;  
Sec. 29, lots 3, 4,  $N\frac{1}{2}SW\frac{1}{4}$ ,  $NW\frac{1}{4}$ ;  
Sec. 30.
- T. 15 N., R. 19 E.,  
Secs. 1 through 24 inclusive;  
Sec. 25,  $NE\frac{1}{4}NE\frac{1}{4}$ ,  $S\frac{1}{2}NE\frac{1}{4}$ ,  $SE\frac{1}{4}$ ,  $S\frac{1}{2}SW\frac{1}{4}$ ;  
Secs. 26 through 33 inclusive;  
Sec. 34, lots 5, 6,  $N\frac{1}{2}NE\frac{1}{4}$ ,  $NW\frac{1}{4}$ ,  $N\frac{1}{2}SW\frac{1}{4}$ ;  
Secs. 35 and 36.
- T. 16 N., R. 19 E.,  
All public lands outside the National Forest boundary.
- T. 7 N., R. 20 E.,  
Secs. 3 through 9 inclusive;  
Secs. 17 and 18.
- T. 8 N., R. 20 E.,  
Secs. 24 through 27 inclusive;  
Secs. 30 through 36 inclusive.
- T. 9 N., R. 20 E.  
T. 10 N., R. 20 E.  
T. 11 N., R. 20 E.  
T. 12 N., R. 20 E.
- T. 13 N., R. 20 E.,  
Sec. 4, unsurveyed;  
Sec. 5;  
Sec. 6, lots 1, 2,  $S\frac{1}{2}NE\frac{1}{4}$ ,  $SE\frac{1}{4}$ ;  
Sec. 7,  $E\frac{1}{2}$ ;  
Sec. 8;  
Sec. 9, unsurveyed;  
Secs. 15 and 16; unsurveyed;  
Sec. 17;  
Sec. 18,  $E\frac{1}{2}SE\frac{1}{4}$ ;  
Sec. 19,  $NE\frac{1}{4}$ ;  
Secs. 20 and 21;  
Sec. 22, unsurveyed;  
Secs. 26 and 27, unsurveyed;  
Sec. 28;  
Sec. 29,  $NE\frac{1}{4}$ ,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $E\frac{1}{2}SE\frac{1}{4}$ ;  
Secs. 33 and 34;  
Sec. 35, unsurveyed.
- T. 14 N., R. 20 E.,  
Secs. 6 and 7, unsurveyed;  
Secs. 18 through 20 inclusive, unsurveyed;  
Secs. 29 and 30, unsurveyed;  
Sec. 31, lot 1,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $E\frac{1}{2}$ ;  
Secs. 32 and 33, unsurveyed.
- T. 15 N., R. 20 E.,  
Sec. 1,  $SW\frac{1}{4}$ ;  
Sec. 2, lots 6, 7,  $W\frac{1}{2}SE\frac{1}{4}$ ,  $SW\frac{1}{4}$ ,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$ ;  
Secs. 3 through 11 inclusive;  
Sec. 12, lots 2, 3, 4,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}NE\frac{1}{4}$ ,  $S\frac{1}{2}$ ;  
Secs. 13 through 25 inclusive;  
Secs. 30 and 31;  
Sec. 36.
- T. 16 N., R. 20 E.,  
Secs. 3 through 8 inclusive, those portions in Custer County;  
Secs. 9 and 10;  
Sec. 11, that portion in Custer County;  
Secs. 13 and 14, those portions in Custer County;  
Secs. 15 through 23 inclusive;  
Sec. 24, that portion in Custer County;  
Secs. 26 through 36 inclusive.
- T. 17 N., R. 20 E.,  
Secs. 33 and 34, those portions in Custer County.
- T. 8 N., R. 21 E.  
T. 9 N., R. 21 E.,  
Secs. 3 through 11 inclusive;  
Sec. 13,  $W\frac{1}{2}NW\frac{1}{4}$ ,  $SE\frac{1}{4}NW\frac{1}{4}$ ,  $SW\frac{1}{4}$ ;  
Secs. 14 through 36 inclusive.
- T. 10 N., R. 21 E.,  
Secs. 1 through 33 inclusive;  
Sec. 34,  $W\frac{1}{2}W\frac{1}{2}$ .
- T. 11 N., R. 21 E.,  
Sec. 4, lots 3, 4,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}$ ;  
Secs. 5 through 9 inclusive;  
Secs. 16 through 22 inclusive;  
Secs. 27 through 36 inclusive.
- T. 12 N., R. 21 E.,  
All public lands outside the National Forest boundary.
- T. 13 N., R. 21 E.,  
All public lands outside the National Forest boundary.
- T. 14 N., R. 21 E.,  
Sec. 3, lots 4, 5, 6, 7,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $SW\frac{1}{4}SW\frac{1}{4}$ ,  $S\frac{1}{2}SE\frac{1}{4}$ ;  
Secs. 4 through 10 inclusive;  
Sec. 11,  $NW\frac{1}{4}$ ,  $S\frac{1}{2}$ ;  
Secs. 14 through 17 inclusive;  
Secs. 20 through 23 inclusive;  
Secs. 25 through 29 inclusive;  
Secs. 32 through 36 inclusive.
- T. 15 N., R. 21 E.,  
Sec. 18, lots 1, 2, 3, 4,  $E\frac{1}{2}W\frac{1}{2}$ ,  $W\frac{1}{2}E\frac{1}{2}$ ,  $E\frac{1}{2}SE\frac{1}{4}$ ;  
Sec. 19;  
Sec. 20,  $SW\frac{1}{4}$ ;  
Sec. 28,  $SW\frac{1}{4}$ ;  
Sec. 29,  $NW\frac{1}{4}$ ,  $S\frac{1}{2}$ ;  
Secs. 30 through 33 inclusive.
- T. 7 N., R. 22 E.,  
Secs. 1 through 6 inclusive;  
Secs. 9 through 14 inclusive.
- T. 8 N., R. 22 E.,  
Sec. 1;  
Sec. 2, lots 1, 2,  $S\frac{1}{2}NE\frac{1}{4}$ ,  $SE\frac{1}{4}$ ;
- Secs. 4 through 10 inclusive;  
Sec. 11,  $W\frac{1}{2}SW\frac{1}{4}$ ;  
Sec. 12;  
Sec. 13,  $NE\frac{1}{4}$ ;  
Secs. 14 through 22 inclusive;  
Secs. 27 through 35 inclusive.
- T. 9 N., R. 22 E.,  
Sec. 4;  
Sec. 5, lots 1, 2,  $S\frac{1}{2}NE\frac{1}{4}$ ,  $SE\frac{1}{4}$ ;  
Sec. 8,  $E\frac{1}{2}$ ;  
Sec. 9;  
Sec. 10, unsurveyed;  
Sec. 15, unsurveyed;  
Sec. 17,  $NE\frac{1}{4}$ ,  $N\frac{1}{2}SE\frac{1}{4}$ ;  
Sec. 21,  $NE\frac{1}{4}$ ;  
Sec. 22, unsurveyed;  
Sec. 26, unsurveyed;  
Sec. 27,  $E\frac{1}{2}$  unsurveyed,  $E\frac{1}{2}W\frac{1}{2}$ ,  $NW\frac{1}{4}NW\frac{1}{4}$ ;  
Secs. 30 through 33 inclusive;  
Sec. 34,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $NE\frac{1}{4}$ ,  $NE\frac{1}{4}SE\frac{1}{4}$ ;  
Secs. 35 and 36, unsurveyed.
- T. 10 N., R. 22 E.,  
Sec. 7, lots 3, 4,  $E\frac{1}{2}SW\frac{1}{4}$ ,  $SE\frac{1}{4}$ ;  
Secs. 17 through 20 inclusive;  
Secs. 29 through 32 inclusive.
- T. 11 N., R. 22 E.,  
All public land outside the National Forest boundary.
- T. 12 N., R. 22 E.,  
All public land outside the National Forest boundary.
- T. 13 N., R. 22 E.,  
Sec. 1, that portion in Custer County;  
Sec. 2, lot 4,  $SW\frac{1}{4}NW\frac{1}{4}$ ,  $W\frac{1}{2}SW\frac{1}{4}$ ;  
Secs. 3 through 11 inclusive;  
Sec. 14,  $W\frac{1}{2}$ ,  $W\frac{1}{2}NE\frac{1}{4}$ ;  
Secs. 15 through 22 inclusive;  
Sec. 23,  $W\frac{1}{2}$ ,  $W\frac{1}{2}SE\frac{1}{4}$ ,  $SE\frac{1}{4}SE\frac{1}{4}$ ;  
Sec. 25,  $W\frac{1}{2}$ ,  $SE\frac{1}{4}$ ,  $S\frac{1}{2}NE\frac{1}{4}$ ;  
Secs. 26 and 27;  
Secs. 35 and 36.
- T. 14 N., R. 22 E.,  
Sec. 28,  $SW\frac{1}{4}$ ;  
Secs. 29 through 33;  
Sec. 34,  $S\frac{1}{2}N\frac{1}{2}$ ,  $S\frac{1}{2}$ .
- T. 7 N., R. 23 E.,  
Secs. 1 through 11 inclusive;  
Sec. 12,  $NE\frac{1}{4}NW\frac{1}{4}$ ,  $NW\frac{1}{4}NE\frac{1}{4}$ ,  $SW\frac{1}{4}SE\frac{1}{4}$ ,  $S\frac{1}{2}SW\frac{1}{4}$ ,  $NW\frac{1}{4}SW\frac{1}{4}$ ;  
Secs. 13 through 18 inclusive.
- T. 8 N., R. 23 E.,  
Sec. 7, lots 3, 4, 5, 6, 7,  $NE\frac{1}{4}SW\frac{1}{4}$ ,  $N\frac{1}{2}SE\frac{1}{4}$ ;  
Sec. 8,  $N\frac{1}{2}S\frac{1}{2}$ ,  $SW\frac{1}{4}SW\frac{1}{4}$ ,  $SE\frac{1}{4}SE\frac{1}{4}$ ;  
Sec. 15,  $SW\frac{1}{4}$ ;  
Secs. 16 through 18 inclusive;  
Sec. 19,  $E\frac{1}{2}$ ;  
Secs. 20 through 23 inclusive;  
Sec. 24,  $S\frac{1}{2}$ ;  
Secs. 26 through 28 inclusive;  
Sec. 29,  $N\frac{1}{2}$ ,  $SE\frac{1}{4}$ ;  
Secs. 32 through 36 inclusive.
- T. 10 N., R. 23 E.,  
All public land outside the National Forest boundary.
- T. 11 N., R. 23 E.,  
All public land outside the National Forest boundary.
- T. 12 N., R. 23 E.,  
Sec. 1,  $S\frac{1}{2}NE\frac{1}{4}$ ,  $S\frac{1}{2}$ ;  
Sec. 2, lots 3, 4,  $S\frac{1}{2}NW\frac{1}{4}$ ,  $S\frac{1}{2}$ ;  
Sec. 3,  $SW\frac{1}{4}NW\frac{1}{4}$ ,  $NW\frac{1}{4}SW\frac{1}{4}$ ,  $S\frac{1}{2}S\frac{1}{2}$ ;  
Secs. 4 through 36 inclusive.
- T. 13 N., R. 23 E.,  
Sec. 5, that portion in Custer County;  
Sec. 6, that portion in Custer County;  
Sec. 7,  $E\frac{1}{2}$ ;  
Sec. 8;  
Secs. 9 through 11, those portions in Custer County;  
Sec. 13, that portion in Custer County;  
Secs. 14 through 17 inclusive;  
Sec. 18,  $E\frac{1}{2}$ ;  
Sec. 21,  $N\frac{1}{2}$ ,  $N\frac{1}{2}S\frac{1}{2}$ ,  $S\frac{1}{2}SE\frac{1}{4}$ ;  
Secs. 22 through 27 inclusive;  
Sec. 28,  $NE\frac{1}{4}NE\frac{1}{4}$ ;  
Secs. 29 through 33 inclusive;  
Sec. 35,  $N\frac{1}{2}NW\frac{1}{4}$ ,  $SE\frac{1}{4}NW\frac{1}{4}$ ,  $W\frac{1}{2}NE\frac{1}{4}$ .

T. 6 N., R. 24 E.,  
Secs. 5 and 6.  
T. 7 N., R. 24 E.,  
Sec. 4, S $\frac{1}{2}$ ;  
Sec. 5, lots 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Sec. 6;  
Secs. 8 through 10 inclusive;  
Sec. 11, SW $\frac{1}{4}$ ;  
Secs. 13 through 16 inclusive;  
Secs. 18 through 27 inclusive;  
Secs. 29 through 33 inclusive.  
T. 8 N., R. 24 E.,  
Those public lands outside the National  
Forest boundary.  
T. 9 N., R. 24 E.,  
Those public lands outside the National  
Forest boundary.  
T. 10 N., R. 24 E.  
T. 11 N., R. 24 E.  
T. 12 N., R. 24 E.,  
Secs. 3 and 4;  
Sec. 5, S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
Sec. 6, lot 7, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 7;  
Sec. 8, S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , E $\frac{1}{2}$ NE $\frac{1}{4}$ , NE $\frac{1}{4}$   
SE $\frac{1}{4}$ ;  
Secs. 9 and 10;  
Secs. 13 through 36 inclusive.  
T. 13 N., R. 24 E.,  
Sec. 19, that portion in Custer County;  
Sec. 20;  
Sec. 21, that portion in Custer County;  
Secs. 23 through 34 inclusive.  
T. 9 N., R. 24 $\frac{1}{2}$  E.,  
All public lands outside the National For-  
est boundary.  
T. 10 N., R. 24 $\frac{1}{2}$  E.  
T. 12 N., R. 24 $\frac{1}{2}$  E.,  
All public lands outside the National For-  
est boundary.  
T. 7 N., R. 25 E.,  
Secs. 19 through 21 inclusive;  
Sec. 28, W $\frac{1}{2}$ NW $\frac{1}{4}$ ;  
Sec. 29;  
Sec. 30, lots 1, 2, E $\frac{1}{2}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ .  
T. 10 N., R. 25 E.,  
Secs. 2 through 6 inclusive.  
T. 11 N., R. 25 E.,  
Sec. 2, SW $\frac{1}{4}$ ;  
Sec. 3, lots 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Secs. 4 through 10 inclusive;  
Sec. 11, W $\frac{1}{2}$ ;  
Sec. 14, W $\frac{1}{2}$ ;  
Secs. 15 through 22 inclusive;  
Sec. 23, W $\frac{1}{2}$ ;  
Sec. 26, W $\frac{1}{2}$ ;  
Secs. 27 through 35 inclusive.  
T. 12 N., R. 25 E.,  
All public lands outside the National For-  
est boundary.  
The area described contains approxi-  
mately 700,922 acres of public lands.  
BOISE MERIDIAN, CUSTER COUNTY, IDAHO  
ADMINISTERED BY THE IDAHO FALLS DISTRICT, I-3  
T. 4 N., R. 24 E.,  
Sec. 2, NW $\frac{1}{4}$ , NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Secs. 3 and 4;  
Sec. 5, E $\frac{1}{2}$ NE $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ .  
T. 5 N., R. 24 E.,  
Secs. 13 through 16, inclusive;  
Secs. 19 through 29, inclusive;  
Sec. 30, N $\frac{1}{2}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , SE $\frac{1}{4}$ SE $\frac{1}{4}$ , NE $\frac{1}{4}$   
SW $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 31, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Secs. 32 through 36 inclusive, lying within  
Custer County.  
T. 6 N., R. 24 E.,  
Secs. 3 and 4;  
Secs. 9 through 11, inclusive;  
Sec. 13, S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ ;  
Secs. 14 through 16, inclusive;  
Secs. 21 through 24, inclusive.

T. 5 N., R. 25 E.,  
Secs. 2 through 11, inclusive, lying within  
Custer County;  
Secs. 15 through 21, inclusive, lying within  
Custer County;  
Secs. 29 through 31, inclusive, lying within  
Custer County.  
T. 6 N., R. 25 E.,  
Secs. 14 and 15;  
Secs. 17 through 23, inclusive;  
Secs. 26 through 32, inclusive;  
Sec. 33, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Sec. 34.  
T. 7 N., R. 25 E.,  
Secs. 22, 23, and 26, lying within Custer  
County;  
Sec. 27, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Sec. 28, S $\frac{1}{2}$ N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ ,  
SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Secs. 33 through 35, inclusive, lying within  
Custer County.  
T. 9 N., R. 25 E.,  
Secs. 1 through 17, inclusive;  
Secs. 21 through 26, inclusive;  
Secs. 35 and 36.  
T. 10 N., R. 25 E.,  
Sec. 1;  
Secs. 7 through 36, inclusive.  
T. 11 N., R. 25 E.,  
Sec. 1, S $\frac{1}{2}$ ;  
Sec. 2, SE $\frac{1}{4}$ ;  
Sec. 11, E $\frac{1}{2}$ ;  
Secs. 12 and 13;  
Sec. 14, E $\frac{1}{2}$ ;  
Sec. 23, E $\frac{1}{2}$ ;  
Secs. 24 and 25;  
Sec. 26, E $\frac{1}{2}$ ;  
Sec. 36.  
T. 11 N., R. 26 E.,  
Sec. 3, lying within Custer County;  
Secs. 4 and 5;  
Sec. 6, S $\frac{1}{2}$ ;  
Secs. 7 through 9, inclusive;  
Secs. 10, 11, and 14, lying within Custer  
County;  
Secs. 15 through 23, inclusive;  
Secs. 23 and 26, lying within Custer  
County;  
Secs. 27 through 34, inclusive;  
Sec. 35, lying within Custer County.

The area described contains approxi-  
mately 85,099 acres of public land.  
3. As provided in paragraph 1 above,  
the following lands are further segre-  
gated from appropriation under the gen-  
eral mining laws:

BOISE MERIDIAN, IDAHO

UPPER EAST FORK CAMPGROUND

T. 9 N., R. 17 E.,  
Sec. 22, SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 27, NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 28, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

JIMMY SMITH LAKE CAMPGROUND

T. 10 N., R. 18 E.;  
Sec. 30, lot 4.

BRUNO CREEK CAMPSITE

T. 11 N., R. 17 E.;  
Sec. 6, NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

SULLIVAN SPRINGS CAMPGROUND

T. 11 N., R. 17 E.;  
Sec. 22, lot 4.

CLAYTON RANGER STATION CAMPGROUND

T. 11 N., R. 17 E.,  
Sec. 29, lot 11;  
Sec. 30, lot 10.

HERD CREEK CAMPSITE

T. 10 N., R. 18 E.;  
Sec. 35, NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

FOX CREEK CAMPGROUND

T. 9 N., R. 18 E.,  
Sec. 3, lots 3 and 4.

ZIEGLER'S HOLE RECREATION SITE

T. 10 N., R. 18 E.,  
Sec. 24, SE $\frac{1}{4}$ SW $\frac{1}{4}$ .

EAST FORK RECREATION SITE

T. 11 N., R. 18 E.,  
Sec. 22, lot 5.

BIRCH CREEK RECREATION SITE

T. 11 N., R. 18 E.,  
Sec. 22, lot 8.

SPUD CREEK RECREATION SITE

T. 11 N., R. 18 E.,  
Sec. 22, lot 11;  
Sec. 27, lots 1 and 2;  
Sec. 28, lots 2 and 3.

DAYHORSE CREEK RECREATION SITE

T. 12 N., R. 18 E.,  
Sec. 2, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 11, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ .

BRADSHAW GULCH RECREATION SITE

T. 12 N., R. 18 E.,  
Sec. 25, lot 4.

DEADMAN HOLE RECREATION SITE

T. 12 N., R. 19 E.,  
Sec. 19, lot 7;  
Sec. 30, lots 1, 2, and 3.

ROCKY NARROWS RECREATION SITE

T. 14 N., R. 18 E.,  
Sec. 12, NE $\frac{1}{4}$ NE $\frac{1}{4}$ .

SHEEP CREEK RECREATION SITE

T. 9 N., R. 19 E.,  
Sec. 17, NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

LAKE CREEK FISHING SITE

T. 9 N., R. 19 E.,  
Sec. 23, SE $\frac{1}{4}$ SE $\frac{1}{4}$ .

WOOD CREEK RECREATION SITE

T. 12 N., R. 19 E.,  
Sec. 6, lot 13.

ROUND VALLEY RECREATION SITE

T. 13 N., R. 19 E.,  
Sec. 10, lots 6 and 7.

MORGAN CREEK RECREATION SITE

T. 16 N., R. 19 E.,  
Sec. 33, lot 2.

PINTO CREEK RECREATION SITE

T. 8 N., R. 21 E.,  
Sec. 30, lot 2.

SPRING GULCH RECREATION SITE

T. 15 N., R. 20 E.,  
Sec. 18, lot 1.

MINE ELLIS BRIDGE RECREATION SITE

T. 16 N., R. 20 E.,  
Sec. 34, lots 3, 4, and 7;  
Sec. 35, lot 1.

BLACIE DAISY RECREATION SITE

T. 7 N., R. 23 E.,  
Sec. 11, SE $\frac{1}{4}$ SE $\frac{1}{4}$ ;  
Sec. 12, W $\frac{1}{2}$ SW $\frac{1}{4}$ .

## DOUBLE SPRINGS RECREATION SITE

T. 12 N., R. 23 E.,  
Sec. 31, lot 4.

## SUMMIT CREEK RECREATION SITE

T. 11 N., R. 25 E.,  
Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$ ;  
Sec. 23, NW $\frac{1}{4}$ NW $\frac{1}{4}$ .

## BLAZE RECREATION SITE

T. 7 N., R. 24 E.,  
Sec. 20, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ .

## BARNEY HOT SPRINGS RECREATION SITE

T. 11 N., R. 25 E.,  
Sec. 22, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

The total area of these sites is approximately 1,637 acres.

## BOISE MERIDIAN, IDAHO

## RAS CANYON CAMPGROUND

T. 4 N., R. 24 E.,  
Sec. 2, NW $\frac{1}{4}$ SW $\frac{1}{4}$ ;  
Sec. 3, NE $\frac{1}{4}$ SE $\frac{1}{4}$ .

## SCHOOL HOUSE CANYON CAMPGROUND

T. 5 N., R. 24 E.,  
Sec. 35, SE $\frac{1}{4}$ SE $\frac{1}{4}$  (lot 4).

## MARSH CANYON CAMPGROUND

T. 5 N., R. 25 E.,  
Sec. 29, NE $\frac{1}{4}$ NW $\frac{1}{4}$ .

## DIVERSION CAMPGROUND

T. 6 N., R. 25 E.,  
Sec. 14, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

The total area of these sites is approximately 240 acres.

4. Several comments were received following publication of a notice of proposed classification in the FEDERAL REGISTER of September 24, 1970 (35 F.R. 14853), and at the public hearing which was held at Challis, Idaho, on October 16, 1970. All comments have been evaluated under the law and the regulations. The record showing the comments and other information is on file and can be examined in either the Salmon District Office, Salmon, Idaho, or the Idaho Land Office, Boise, Idaho.

5. For a period of 30 days from the date of publication of this notice of classification in the FEDERAL REGISTER, this classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior as provided for in 43 CFR Subpart 2461. During this period, interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

WM. L. MATHEWS,  
State Director.

[F.R. Doc. 70-16664; Filed, Dec. 10, 1970;  
8:46 a.m.]

[Serial Nos. N-818, N-4323, N-4527, N-4528,  
N-4529, N-4542, N-4566]

## NEVADA

### Notice of Classification of Public Lands for Transfer Out of Federal Ownership

DECEMBER 4, 1970.

1. Pursuant to section 2 of the Act of September 19, 1964 (43 U.S.C. 1412), the lands described below are hereby classi-

fied for disposal through sale under authority of the Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421-1427).

2. Protests or comments to the notice of proposed classification, published in the FEDERAL REGISTER on September 24, 1970 (F.R. Doc. 70-12700) were received from four sources. Each protest and comment is briefly discussed below.

*Comment by Nevada Bureau of Mines.* The author of this comment states that sale of land under the Public Land Sale Act "locks up" mineral resources and eliminates prospecting. Sale of land under the cited authority does reserve all minerals to the United States and withdraws same from appropriation. The protestant further states that he has no knowledge of any mineral potential in the ground in question. The lands being classified were examined by qualified Bureau geologists and there are no known valuable mineral deposits, or indications thereof, in or near the subject lands. There is considerable alluvial gravel, underlain by lake bed silts which are in turn underlain, presumably, by paleozoic carbonate rocks at unknown depths and of unknown thickness. Field examination of the subject lands found that their development potential outweighs the mineral potential and that withdrawal of minerals would not be detrimental to the public interest.

*Protest by Nevada Outdoor Recreation Association.* The protestant opposes disposal of the subject land on the grounds that: (1) " \* \* \* such action poses a threat to an already serious air pollution problem in the Las Vegas basin"; (2) "This disposal will almost certainly result in malignant urban sprawl \* \* \* a major factor in deleterious effects in air quality", and " \* \* \* has been shown as a notorious factor in inner urban decay", and that the disposal " \* \* \* is in glaring conflict with the Environmental Quality Act". This protest is expressed in general terms, and expresses a fear of what might happen as a result of development of the lands proposed for sale. Limiting the population growth of Las Vegas Valley will not in itself solve the air pollution problem. This is a matter that can be controlled by other means. The city of Las Vegas and Clark County officials have already commented on the requirements that will be imposed on any prospective developer. A properly developed satellite community could be a considerable asset to the growth of Clark County. We can find nothing directly relevant to the protestant's comments that are in conflict with the Environmental Policy Act. Retention of public lands in Federal ownership will not in itself solve the problem of controlling environmental quality.

*Comment by the Clark County Planning Commission.* The Commission recommends denial of portions of the subject land, approximately 320 acres, due to an expressed interest by the Inter Tribal Council of Nevada. The Las Vegas District Office was informally contacted once by a representative of the Council

with respect to lands that might be suitable for acquisition and development for the benefit of Indian citizens. There is nothing of record to indicate that the Inter Tribal Council is interested in acquiring any specific parcel or parcels of land. A copy of the notice of proposed classification was served on the Council. We have received no comment in response to the notice. A copy of this notice will be served on the Council in order that it may comment on the classification.

*Comment by the Western Rockhound Association, Inc.* The WRA recommends " \* \* that no public lands should be transferred out of Federal ownership, but held in abeyance until in-depth studies are made to determine the current and potential values and needs of the land." The subject lands have been thoroughly examined by field examiners of the Bureau of Land Management and have been found well suited for disposal with a potential for development. There is approximately 2 $\frac{1}{2}$  million acres of public land in Clark County presently classified for multiple-use management. These lands are being managed for the use and enjoyment of the public. The lands being classified for disposal are outside the boundaries of the multiple-use lands and are best suited for transfer into private ownership. It is felt that the benefits to be derived by disposal of the subject lands outweigh the objections that have been raised. Therefore, the lands are hereby classified as proposed.

3. The lands affected by this classification are located in Clark County, Nev., and are described as follows:

## MOUNT DIABLO MERIDIAN, NEVADA

T. 18 S., R. 59 E.,  
Sec. 26, NE $\frac{1}{4}$ , NE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$   
NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Sec. 27, NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NE $\frac{1}{4}$   
NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Sec. 28;  
Sec. 32;  
Sec. 33;  
Sec. 34;  
Sec. 35;  
Sec. 36, SE $\frac{1}{4}$ , W $\frac{1}{2}$ .  
T. 19 S., R. 60 E.,  
Sec. 5, lots 3 and 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$ ,  
SE $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 6, lots 1, 3, 4, 5, and 7, SE $\frac{1}{4}$ NE $\frac{1}{4}$ ,  
SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$ .  
Containing 5,304.12 acres.  
Petition-Application N-818 is denied as  
to the following described lands:

## MOUNT DIABLO MERIDIAN, NEVADA

T. 18 S., R. 59 E.,  
Sec. 22, S $\frac{1}{2}$ S $\frac{1}{2}$ ,  
Sec. 26, W $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ ;  
Sec. 27, NE $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ , NW $\frac{1}{4}$   
NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ N $\frac{1}{2}$ NW $\frac{1}{4}$ .  
Containing 290 acres of public land.

4. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM, 320, Washington, D.C. 20240. (43 CFR 2462.3).

NOLAN F. KEHL,  
State Director, Nevada.

[F.R. Doc. 70-16665; Filed, Dec. 10, 1970;  
8:46 a.m.]

**DEPARTMENT OF AGRICULTURE**

Consumer and Marketing Service

**HUMANELY SLAUGHTERED LIVESTOCK**

**Identification of Carcasses; Changes in Lists of Establishments**

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 381.1, the lists (35 F.R. 12862, 14226, 15655, and 17134) of establishments which are operated under Federal inspection pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and which use humane methods of slaughter and incidental handling of livestock are hereby amended as follows:

The reference to swine with respect to Amarillo Packing Co., Establishment 2273, is deleted. The reference to Danville Meat Products, Establishment 7486, and the reference to cattle, calves, sheep, and swine with respect to such establishment are deleted. The reference to Dealman Enterprise, Inc., Establishment 7562, and the reference to cattle with respect to such establishment are deleted.

The following table lists species at additional establishments and additional species at previously listed establishments that have been reported as being slaughtered and handled humanely.

Name of establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses	Mules
Sam Kane Packing Co.	337	(*)	(*)					
Coll, Inc.	675	(*)	(*)					
Colorado State University Department of Animal Science	2233	(*)	(*)	(*)	(*)	(*)		
Ben Grantham Meat Packers	2230	(*)				(*)		
City Packing Co.	7130			(*)	(*)			
New establishments reported: 5.								
Bub Davis Packing Co.	171		(*)					
Callaway Packing Co., Inc.	683					(*)		
Yokum Packing Co., Ltd.	2216		(*)					
Sunray Meats, Inc.	2274					(*)		
Joe's Packing Co.	7022				(*)			
Abercrombie Meat Processing Co.	7601			(*)				
Langdon Lockers	7622			(*)				
Wetsch Jack & Jill	7646					(*)		
Species added: 8.								

Done at Washington, D.C., on December 8, 1970.

KENNETH M. MCENROE,  
Deputy Administrator,  
Meat and Poultry Inspection Programs.

[F.R. Doc. 70-16703; Filed, Dec. 10, 1970; 8:49 a.m.]

**DEPARTMENT OF COMMERCE**

Office of the Secretary

[Dept. Organization Order 10-7]

**ASSISTANT SECRETARY FOR TOURISM**

**Authority and Functions**

The following order was issued by the Secretary of Commerce effective October 21, 1970. This material supersedes the material appearing at 26 F.R. 6747 of July 27, 1961.

**SECTION 1. Purpose.** This order prescribes the scope of authority of the Assistant Secretary for Tourism and the functions of the U.S. Travel Service.

**Sec. 2. Status and line of authority.**

.01 Pursuant to the authority vested in the Secretary by law, the U.S. Travel Service is continued as a primary operating unit of the Department of Commerce.

.02 As provided by Public Law 91-477 of October 21, 1970, the Assistant Secretary for Tourism (the "Assistant Secretary"), who is appointed by the President by and with the advice and consent of the Senate, shall be the head of the U.S. Travel Service.

.03 A Deputy Assistant Secretary for Tourism is hereby established the incumbent of which shall serve as the principal assistant of the Assistant Secretary

and shall perform the functions of the Assistant Secretary in his absence.

**SEC. 3. Delegation of authority.**

.01 Subject to such policies and limitations as the Secretary of Commerce may prescribe, the Assistant Secretary shall perform the functions and exercise the powers and authorities vested in the Secretary by the International Travel Act of 1961, as amended (the "Act") (22 U.S.C. 2121 et seq.).

.02 The Assistant Secretary may exercise other authorities of the Secretary as applicable to performing the functions assigned in this order.

.03 The Assistant Secretary may redelegate his authority to any employee of the U.S. Travel Service, subject to such conditions in the exercise of such authority as he may prescribe.

**Sec. 4. Functions.** The Assistant Secretary shall have primary responsibility for promoting travel to the United States by residents of foreign countries to improve the U.S. balance of payments and to promote friendly understanding and good will among peoples of foreign countries and of the United States. In carrying out this responsibility, the Assistant Secretary shall:

a. Develop, plan and carry out a comprehensive program designed to stimulate and encourage travel to the United States for the purpose of study, culture, recreation, business and other activities;

b. Encourage the development of tourist facilities, low cost unit tours, and other arrangements within the United States for meeting the requirements of foreign visitors;

c. Foster and encourage the widest possible distribution of the benefits of travel at the cheapest rates between foreign countries and the United States consistent with sound economic principles;

d. Encourage the simplification, reduction, or elimination of barriers to travel, and the facilitation of international travel generally;

e. Collect, publish, and provide for the exchange of statistics and technical information, including schedules of meetings, fairs, and other attractions, relating to international travel and tourism;

f. Utilize the facilities and services of Federal agencies to the fullest extent possible;

g. Consult and cooperate with individuals, businessmen, and organizations engaged in or concerned with international travel, including local, State, Federal and foreign governments and international agencies;

h. Obtain the advice and services of qualified professional organizations and personnel;

i. Make grants or proposals for contracts for projects designed to carry out the purposes of the Act, subject to the provisions of section 3(a) (5) and (6) of the Act;

j. Provide, according to such policies, standards, criteria and procedures as he may establish, incentives to travel agents and tour operators in foreign countries for the promotion of travel to the United States; and

k. Provide secretarial, clerical and other assistance to the National Tourism Resources Review Commission.

Effective date: October 21, 1970.

LARRY A. JOBE,  
Assistant Secretary  
for Administration.

[F.R. Doc. 70-16658; Filed, Dec. 10, 1970; 8:45 a.m.]

[Dept. Organization Order 25-1]

**UNITED STATES TRAVEL SERVICE**

**Organization and Functions**

The following order was issued by the Secretary of Commerce on November 12, 1970. This material supersedes the material appearing at 32 F.R. 11349 of August 4, 1967; 34 F.R. 17309 of October 24, 1969; and 35 F.R. 16420 of October 21, 1970.

**SECTION 1. Purpose.** This order prescribes the organization and assignment of functions within the United States Travel Service.

**Sec. 2. Organization structure.** The principal organization structure and line of authority of the U.S. Travel Service shall be as depicted in the attached organization chart. (A copy of the organization chart is on file with original of this document with the Office of the Federal Register.)

**SEC. 3. Office of the Assistant Secretary.** .01 The Assistant Secretary for Tourism determines policy, directs the programs, and is responsible for all activities of the United States Travel Service.

.02 The Deputy Assistant Secretary shall serve as principal adviser and assistant to the Assistant Secretary and shall perform the duties of the Assistant Secretary in his absence. He shall establish and maintain relations with government and industry officials at all levels to facilitate the plans and programs of the U.S. Travel Service.

.03 The Executive Officer shall coordinate the activities of the headquarters organization; assist the Assistant Secretary in establishing policies and programs; take action required to assure implementation of the decisions, directions and requests of the Assistant Secretary relative to policies, plans, and operations of the Service; and serve as a focal point of coordination between the headquarters organization and the Service's Regional Offices.

**Sec. 4. Staff offices.** .01 The Office of Administration shall arrange for and facilitate the provision of administrative services from the Office of the Secretary as needed by the headquarters of the U.S. Travel Service, develop and maintain the internal administrative management system of the Service, perform evaluative, analytic, and developmental work to assist the Assistant Secretary in assuring that the best management practices are utilized, both in the headquarters and in the field, and perform specific administrative tasks as directed by the Assistant Secretary.

.02 The Office of Research and Analysis shall assist in planning long-range travel promotion programs and servicing private business with travel data useful in marketing international travel by improved qualitative analysis of travel statistics and development of information on travel markets. Specifically, the Office shall study the patterns of international travel and the economic effects of tourism; develop statistical data on the travel account in the balance of payments; conduct and interpret market research to measure results of the promotional program; evaluate the effect of legislation and regulatory decisions on international travel; prepare and coordinate position papers for intergovernmental and international travel meetings; and develop measures for evaluating programs of the Service. The Office shall also assist the Visitor Services Division in the administration of the matching grant program by reviewing and analyzing grant applications.

.03 The Office of Public Information shall plan and conduct an information program for the U.S. Travel Service which presents the organization's accomplishments and activities to the public; create an awareness of the U.S. Travel Service role and contributions to the travel industry and coordinate public information activities within the organization and maintain close contact with communications media. The Office

shall advise the Assistant Secretary and other U.S. Travel Service officials on publications, motion pictures and information policies and shall provide information to insure public understanding of activities and objectives of the VISIT USA program. The Office shall develop articles, pictorial material and publications about travel in the United States for response to inquiries from the general public, visitors, editors and radio, television and film producers, to support the public information programs of the U.S. Travel Service offices abroad.

**Sec. 5. Marketing Division.** The Marketing Division shall develop and implement programs of travel advertising; and other travel promotion materials and projects, and coordinate all other promotional activities abroad. The Division shall maintain close professional contact with the travel industry in the United States, to provide current data for the use of U.S. Travel Service offices abroad, such as cost, price and travel information. The Division shall assist and advise the travel industry on the design and content of promotion materials for the world's principal travel markets; provide useful sales promotion tools and materials in foreign languages to U.S. Travel Service Regional Offices and U.S. Government missions abroad in order to help the travel trade and the prospective traveler favorably compare the United States with other destinations; and develop and place advertising in trade and other communication media abroad to stimulate travel to the United States.

**Sec. 6. Visitor Services Division.** The Visitor Services Division shall develop programs to assure a friendly welcome in the United States for international visitors and to generally improve the Nation's host services. The Division shall have primary responsibility for the U.S. Travel Service relationship with States and cities; carry on campaigns in the United States to stimulate interest in the visitor from abroad; make Americans aware of the importance of visitors and of extending a friendly and cordial welcome; assist communities in attracting more international visitors and in adapting their facilities to meet the needs of overseas visitors; and cooperate with the travel industry—hotels, motels, restaurants, sightseeing and transportation companies, and airports and terminals—in bolstering their services for visitors from other nations. The Division shall work to lessen travel barriers, including cooperation with Federal agencies at U.S. ports of entry to expedite the entrance formalities for overseas guests and help make the Nation's reception of visitors more pleasant and gracious. The Division shall also administer a matching grant program to promote foreign travel to selected areas of the United States and shall monitor the progress of approved grants.

**Sec. 7. Convention and Business Travel Development Office.** The Convention and Business Travel Development Office shall develop and implement programs for attracting international congresses, orga-

nizations, and associations to hold meetings and conventions in the United States, for increasing attendance from abroad at U.S. conventions, trade fairs, and exhibitions, and for promoting other business travel to the United States. The Office shall directly solicit such attendance through various media, distribution of information, advertising and designing special services for the overseas businessman from trade and business associations abroad and in coordination with similar organizations in the United States. The Office shall assist and advise the travel trade industry abroad to promote the United States as a business travel destination by providing useful sales promotion materials in foreign languages for this purpose. The Office shall work closely with those centers in the United States which have facilities for hosting international meetings. The Office shall coordinate its full promotion efforts with the Marketing Division and the U.S. Travel Service Regional Offices abroad.

**Sec. 8. Regional Offices.** The Regional Offices, which shall be located in the strategic cities abroad as shown in the attached organization chart, shall serve as the point of contacts with the major potential markets for increased tourism to the United States. More particularly, the offices shall work directly with international carriers, travel agents and tour operators on all aspects of travel to the United States; carry the VISIT USA message to the general public through mass media advertising, travel exhibits, special promotional projects with the travel industry, and publicity in the local media; and distribute to foreign travel sales outlets materials in the language of the country supporting the United States as a satisfying travel experience and a good travel value.

Effective date: November 12, 1970.

LARRY A. JOBE,  
Assistant Secretary  
for Administration.

[F.R. Doc. 70-16608; Filed, Dec. 10, 1970;  
8:45 a.m.]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration  
MONSANTO CO.

### Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 400 (b) (5), 72 Stat. 1786; 21 U.S.C. 348(b) (5)), notice is given that a petition (FAP 1B2611), has been filed by Monsanto Co., 800 North Lindbergh Boulevard, St. Louis, Mo. 63166, proposing the issuance of a regulation (21 CFR Part 121) to provide for the safe use of vinyl chloride copolymerized with ethylene and

acrylamide as a component of paper and paperboard used in contact with food.

Dated: November 30, 1970.

R. E. DUGGAN,  
*Acting Associate Commissioner  
for Compliance.*

[F.R. Doc. 70-16661; Filed, Dec. 10, 1970;  
8:45 a.m.]

Office of the Secretary  
**HEALTH SERVICES AND MENTAL  
HEALTH ADMINISTRATION**

**Statement of Organization, Functions,  
and Delegations of Authority**

Part 3 (Health Services and Mental Health Administration), formerly Part 5, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (33 F.R. 15953, Oct. 30, 1968), is hereby amended with regard to section 3-C, formerly 5-C, Delegations of Authority, as follows:

After the subparagraph numbered (7) of the paragraph entitled "Specific delegations," add a new subparagraph reading:

(8) The functions transferred from the Office of Economic Opportunity to the Department of Health, Education, and Welfare pursuant to the Memorandum of Understanding dated November 2, 1970, signed by the Director, Office of Economic Opportunity and the Secretary, Health, Education, and Welfare, relating to the authority and responsibility under the Public Health Service Act for the administration of a grant program for the provision of assistance to selected Comprehensive Health Services projects (Neighborhood Health Centers), now assisted by the Director under section 222(a) (4) of the Economic Opportunity Act of 1964, as amended. This authority may be redelegated.

Dated: November 6, 1970.

ELLIOT L. RICHARDSON,  
*Secretary, Department of  
Health, Education, and Welfare.*

[F.R. Doc. 70-16673; Filed, Dec. 10, 1970;  
8:46 a.m.]

**DEPARTMENT OF  
TRANSPORTATION**

**Federal Aviation Administration**

**CONSIDERATION OF VFR UTILIZA-  
TION OF NAVIGATIONAL AIDS IN  
AGENCY ESTABLISHMENT OR DE-  
COMMISSIONING CRITERIA**

**Notice of Invitation for Comments**

This notice requests comments and suggestions in accordance with the Department of Transportation policy of

regular consultation with aviation users, aviation industry, State and local governments, other Federal agencies and the general public concerning planning of the National Aviation System.

Current FAA policy does not consider VFR use in any criteria for establishing or retaining navigation aids. Recently, the FAA has received an appreciable number of objections to proposed decommissioning of navigational aids when conducting its continuing program of review of (navaid) usage. The objections come from VFR users and typically point out agency responsibility under the Airport and Airway Development Act of 1970 to improve services. These objections raise a major policy issue that requires action. Accordingly, as one of the first steps in a study of this problem the FAA is requesting objective suggestions in the determination of national guidelines for possibly including VFR-(navaid) use in our planning standards.

One of the primary goals of this study will be the determination of necessary quantifiable data and the techniques required to gather such information. Also, it must be kept in mind that all requirements are constantly increasing and agency resources must be carefully allocated to benefit the entire system.

Among other factors it is requested that comments consider (1) VFR flight plans and their possible application, (2) number of airports in a specific geographic area, (3) number of based aircraft in an area, and (4) possible determination of flight conducted on no flight plan. Suggestions as to determination of priority of this matter in the overall disbursement of agency resources would be appreciated. Also, it is recognized that we are now incorporating area navigation capability into the system and under this concept the precise location of a specific (navaid) is no longer of prime importance to the properly equipped user.

Interested persons are invited to submit such written data and comments as they may desire. Comments should be submitted to: Director, Office of Aviation Policy and Plans, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590, on or before January 15, 1971.

All comments submitted will be available for inspection in Room 935, Federal Office Building 10A, 800 Independence Avenue SW., Washington, D.C.

An analysis of comments received will be a large factor in determining follow-on action. If a change in policy is indicated, this subject may be considered for further discussion at the 1971 Planning Review Conference. Issued in Washington, D.C., on December 4, 1970.

BENJAMIN F. L. DARDEN,  
*Director, Office of Aviation Policy  
and Plans, Federal Avia-  
tion Administration.*

[F.R. Doc. 70-16699; Filed, Dec. 10, 1970;  
8:48 a.m.]

**ATOMIC ENERGY COMMISSION**

[Docket No. 60-346]

**TOLEDO EDISON CO. AND CLEVELAND  
ELECTRIC ILLUMINATING CO.**

**Notice of Application for Construction  
Permit and Facility License**

The Toledo Edison Co., 420 Madison Avenue, Toledo, OH 43601, and The Cleveland Electric Illuminating Co., 55 Public Square, Cleveland, OH 44101, pursuant to section 104(b) of the Atomic Energy Act of 1954, as amended, have filed an application dated August 1, 1969, for a construction permit and facility license to authorize construction and operation of a pressurized water nuclear reactor on the applicants' approximately 900-acre site on the southwest shore of Lake Erie, about 21 miles east of Toledo and about 9 miles northwest of Port Clinton, in Ottawa County, Ohio.

The proposed reactor, designated by the applicants as the Davis-Besse Nuclear Power Station (the station), is designed for initial operation at approximately 2,633 megawatts thermal, with a net electrical output of approximately 872 megawatts.

The Toledo Edison Co. and The Cleveland Electric Illuminating Co. as tenants in common will share undivided ownership of the station and the site, with each sharing the costs of construction and operation of the station. Toledo Edison will have complete responsibility for the design, installation and operation of the facility.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Ida Rupp Public Library, Port Clinton, Ohio.

Dated at Bethesda, Md., this 4th day of December 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,  
*Director,*

*Division of Reactor Licensing.*

[F.R. Doc. 70-16672; Filed, Dec. 10, 1970;  
8:46 a.m.]

**CIVIL AERONAUTICS BOARD**

[Dockets Nos. 22671, 22731; Order 70-12-48]

**AMERICAN AIRLINES, INC., AND  
BRANIFF AIRWAYS, INC.**

**Order of Investigation**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 8th day of December 1970.

American Airlines, Inc. (American) and Braniff Airways, Inc. (Braniff) have separately petitioned the Board<sup>1</sup> to re-

<sup>1</sup>The petitions were filed on Oct. 23, 1970, and Nov. 9, 1970, respectively.

open and investigate the final service rates for the transportation of domestic priority airmail by those carriers and between those points for which airmail rates are presently in effect pursuant to Order E-25610, August 28, 1967, as amended.<sup>3</sup>

The petitioners request that, on and after October 23, 1970, the Board establish increased temporary and final service rates for the transportation of priority airmail. American requests a temporary rate consisting of a line-haul charge of 30.65 cents per nonstop great-circle mail ton-mile, plus terminal charges, and a final service rate consisting of a line-haul charge of 32.47 cents per mail ton-mile, plus terminal charges. The terminal charges presently in effect would be added to both rates. Braniff requests that the Board establish a temporary service rate yielding at least 36.45 cents per mail ton-mile and a final service rate yielding not less than 38.10 cents per mail ton-mile. These yields reflect both line-haul and terminal charges.

In support of their petitions, the carriers assert that the current service rates for domestic priority mail were based on cost data for the year 1965 and on a costing methodology which allocated capacity costs to the various classes of cargo on the basis of the relative amounts of space and weight attributable to each class of traffic; that the costs experienced by the carriers have increased substantially; and that, due to changed circumstances, the current airmail rates are inadequate to compensate the carriers for the costs which are properly related to the mail service. Both carriers further state that the current mail rates are outdated; that the inflationary trends in costs are expected to continue throughout 1970 and 1971; and that the costing techniques employed in Order E-25610 (Docket 16349) are inconsistent with those used in the Nonpriority Mail Rate Case, Order 70-4-9, April 2, 1970 (Docket 18381).

The Postmaster General (PMG) has filed a motion urging the Board to dismiss the carriers' petitions in this proceeding. The PMG contends that American's arguments are unsupported; that American's petition should be considered applicable to that carrier only and not to the entire industry; and that American has no authority to speak for any other carrier. In addition, the PMG urges that a concurrent re-examination of rates for nonpriority mail should be undertaken and that, should the Board investigate the priority mail rates, it should extend such an investigation to include nonpriority rates.

American and Braniff have filed amendments to their petitions and American has filed an answer to the motion of the PMG. The carriers assert that, while they do not purport to speak

for the entire industry, they believe that the current priority air mail rates are too low and that a general investigation of such rates should be instituted by the Board. The carriers submit that their requests for temporary and final rates higher than the current rates should apply to all carriers and should become effective as of the date of the investigation or any other date deemed appropriate by the Board, although they believe that this common date should be October 23, 1970. American also alleges that the request for increased temporary rates is based on its current economic needs; that although it is not necessary to investigate the present nonpriority mail rates, it has no objection to the Board's investigation of these rates; that its petition is amply supported by information available in this and other proceedings of the Board; and that, notwithstanding allegations to the contrary, its petition complies with the requirements of § 302.303 of the Board's procedural regulations.

Several carriers<sup>4</sup> have filed answers supporting American's request for increased priority mail rates<sup>4</sup> and urging the Board to initiate an investigation of the present rates. United has also requested that the investigation encompass nonpriority rates.

By Order E-25610, August 28, 1967, the Board established service rates of compensation for the transportation of domestic priority air mail by the trunklines and local service carriers.<sup>5</sup> The decision in that case was based on cost data for the year 1965 and on a costing methodology which allocated capacity costs to the various classes of cargo on the basis of both the relative amounts of space and weight attributable to each class. However, in the recent decision establishing rates for nonpriority mail,<sup>6</sup> the Board found that the basis on which it had allocated costs in Docket 16349 was no longer appropriate and adopted a method of allocation based entirely on space. American contends that the application of the space concept to the costing of priority mail would produce rates higher than the existing rates. Moreover, the Board notes the recent decreases in yield per ton-mile of priority mail and the carriers' general increase in costs which has led to increases in fares and rates covering most air carrier traffic. Based on the foregoing, it appears that changed circumstances since 1965 support the reopening and investigation of the rates for domestic priority mail.

In his motion to dismiss the carriers' petitions for increased mail rates, the PMG suggests that it also may be de-

sirable to reopen the existing nonpriority mail rates in order to insure that all domestic mail is costed on a consistent basis. United concurs with the PMG that the rates for nonpriority mail also should be reopened and requests that the Board extend the investigation of service mail rates to include the additional issue of nonpriority mail rates. We believe that the requests that the Board investigate all the factors involved in the carriage of all classes of domestic mail have merit and, accordingly, we shall extend the instant investigation to encompass the rates for both domestic priority and nonpriority mail.

The PMG, in answering American's petition, has taken the position that an individual carrier can only open the air mail rates so far as they apply to itself even though they are industry rates. Thus, according to the PMG, the rates for American could be reopened from October 23, 1970, and similarly, the rates for Braniff could be reopened only from November 9, 1970, the dates of the carriers' petitions, but the rates for any other carrier could be reopened only from the date of its petition or the Board's order of investigation. In light of the Postmaster General's answer, both American and Braniff have amended their petitions to make it clear that their petitions are intended as a request that the Board institute a general investigation to establish mail rates for all carriers as of a common effective date. While American and Braniff request that this common date be October 23, 1970, under the doctrine of the TWA case<sup>7</sup> we are without power to open the rates for any carrier prior to the date of the institution of the mail rate investigation, either by order of the Board or through a petition of the Postmaster General or the carrier concerned. Accordingly, the Board has determined that the domestic service mail rates for all carriers, including American and Braniff, shall be reopened as of December 12, 1970.<sup>8</sup> We believe that the reopening date of December 12, 1970, coinciding with the beginning of the Post Office's new accounting period, will facilitate the changeover of domestic service rates while providing uniformity for all the carriers. This investigation will cover priority and nonpriority mail rates for the services of the domestic trunkline and local service carriers and of those air taxi and air commuter carriers currently receiving mail compensation based on Orders E-25610 and 70-4-9.

Both American and Braniff have requested that, pending our investigation of current service rates, the Board establish increased temporary rates, as the carriers should not be required to await the outcome of what might be a lengthy proceeding before obtaining the benefit of increased rates. While the petitioners have supported the reopening of the

<sup>3</sup>Delta, Hughes Air Corp., Mohawk, National, North Central, Piedmont, and United. Eastern and Northwest also support the carriers' requests.

<sup>4</sup>Unlike American and Braniff, the local service carriers request that both the line-haul and the terminal charges be increased.

<sup>5</sup>Domestic Service Mail Rate Investigation, Docket 16349.

<sup>6</sup>Nonpriority Mail Rate Case, Docket 18381, Order 70-4-9, Apr. 2, 1970.

<sup>7</sup>Transcontinental & Western Air, Inc. v. Civil Aeronautics Board, 336 U.S. 601 (1949).

<sup>8</sup>The Board interprets the amended petitions of American and Braniff as not reopening their domestic mail rates at a date earlier than the effective date of an industrywide investigation.

<sup>3</sup>The present service rates established in Order E-25610 consist of a line-haul charge of 24 cents per nonstop great-circle mail ton-mile and variable terminal charges of 2.34 cents, 4.68 cents, and 9.36 cents per pound of mail originated at stations classified as X, Y, and Z, respectively.

present service mail rates, we do not believe that they have submitted sufficient evidence showing that they will suffer undue financial hardship if an increased temporary rate is not established at the present time. Therefore, the carriers' requests for temporary rates will be denied without prejudice.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, particularly sections 102, 204, 406, and 1002 thereof:

*It is ordered, That:*

1. An investigation be, and it hereby is, instituted reopening as of December 12, 1970, the current final domestic service mail rates for priority and nonpriority mail for the purpose of determining new final rates or taking such other action as the facts may warrant.<sup>9</sup>

2. Airlift International, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Caribbean-Atlantic Airlines, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., The Flying Tiger Line Inc., Frontier Airlines, Inc., Hughes Air Corp., Mohawk Airlines, Inc., National Airlines, Inc., North Central Airlines, Inc., Northeast Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans-Caribbean Airways, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., the air taxi and commuter air carriers listed below, and the Postmaster General are hereby made parties to this investigation.

3. Except to the extent granted herein, the petitions of American Airlines, Inc., in Docket 22671, and Braniff Airways, Inc., in Docket 22731, are dismissed without prejudice.

4. The proceeding ordered herein be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated.

5. This order shall be served on all of the above-named parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,  
Secretary.

AIR TAXI AND COMMUTER CARRIERS SUBJECT TO DOMESTIC MULTIELEMENT SERVICE MAIL RATES

Air East, Inc.  
Air Indies Corp.  
Air Midwest, Inc.  
Air North, Inc.  
Air South, Inc.  
Air Wisconsin, Inc.  
Commuter Airlines, Inc.  
Crown Airways, Inc.  
Executive Airlines, Inc.  
Fischer Bros. Aviation, Inc.  
Florida Air Taxi.  
Georgia Air, Inc.

<sup>9</sup> This order is not intended to disturb the subsidy mail rates and other service mail rates established, or to be established, under separate orders of the Board.

Henson Aviation, Inc.  
Hub Airlines, Inc.  
Imperial Airways, Inc.  
Mississippi Valley Airways, Inc.  
Northern Airlines, Inc.  
Pacific Southwest Airlines, Inc.<sup>1</sup>  
Pocono Airlines, Inc.  
Puerto Rico International Airlines, Inc.  
Shawnee Airlines, Inc.  
Southeast Airlines, Inc.  
Trans Central Airlines.<sup>2</sup>  
Travel-Air Aviation, Inc.  
Vercoq Air Service, Inc.

[F.R. Doc. 70-16692; Filed, Dec. 10, 1970;  
8:43 a.m.]

[Docket No. 22787; Order 70-12-37]

## INTER-MOUNTAIN AIRCRAFT CORP. AND BOISE AVIATION, INC.

### Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority December 7, 1970.

A final service mail rate for the transportation of mail by aircraft, established by Order 70-7-36, issued July 7, 1970, in Docket 22030,<sup>3</sup> is currently in effect for Boise Aviation, Inc., an air taxi, operating under 14 CFR Part 298. This rate is based on six round trips per week between Boise, Idaho, and Portland, Ore., via Pendleton, Ore.

The Postmaster General filed a petition on November 20, 1970, stating that the volume of mail involved does not justify weekend trips on this route and he has been authorized by Inter-Mountain Helicopters to petition for a new rate of 52.26 cents per great circle aircraft mile, based on five round trips per week. The carrier and the Post Office Department have agreed that the proposed rate is a fair and reasonable rate for these services.

The Board finds it in the public interest to fix and determine the fair and reasonable rate of compensation to be paid by the Postmaster General for the transportation of mail by aircraft between the aforesaid points. Upon consideration of the petition and other matters officially noticed, it is proposed to issue an order<sup>4</sup> to include the following findings and conclusions:

1. The fair and reasonable final service mail rate to be paid on and after November 20, 1970, to Inter-Mountain Helicopter, Inc., doing business as Inter-Mountain Aircraft Corp. and Boise Aviation, Inc., pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 52.26 cents per great

<sup>1</sup> A California intrastate carrier.

<sup>2</sup> Not subject to nonpriority rates.

<sup>3</sup> The Postmaster's petition refers to the rate for this route established by Order 68-11-94, Nov. 21, 1968, in Docket 20383, which was superseded by Order 70-7-36.

<sup>4</sup> As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

circle aircraft mile between Boise, Idaho, and Portland, Ore., via Pendleton, Ore.

2. This final rate, to be paid entirely by the Postmaster General, is based on five round trips per week flown with Aero Commander 680E aircraft.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

*It is ordered, That:*

1. Inter-Mountain Helicopters, Inc., doing business as Inter-Mountain Aircraft Corp. and Boise Aviation, Inc., the Postmaster General, Hughes Air Corp., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Inter-Mountain Helicopters, Inc., doing business as Inter-Mountain Aircraft Corp. and Boise Aviation, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, as specified below; and

3. This order shall be served upon Inter-Mountain Helicopters, Inc., doing business as Inter-Mountain Aircraft Corp. and Boise Aviation, Inc., the Postmaster General, Hughes Air Corp., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,  
Secretary.

1. Further procedures related to the attached order shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed therein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

2. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed therein and fix and determine the final rate specified therein;

3. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307).

[F.R. Doc. 70-16693; Filed, Dec. 10, 1970;  
8:43 a.m.]

[Docket No. 22774; Order 70-12-38]

## VALLEY AIRLINES, INC.

### Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority December 7, 1970.

The Postmaster General filed a notice of intent November 18, 1970, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 56.6 cents per great circle aircraft mile for the transportation of mail by aircraft between Bakersfield and San Francisco, via Fresno, Calif., based on five round trips per week.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft Tradewind (C-45H) aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order<sup>1</sup> to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Valley Airlines, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 56.6 cents per great circle aircraft mile between Bakersfield and San Francisco, via Fresno, Calif., based on five round trips per week.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f):

*It is ordered, That:*

1. Valley Airlines, Inc., the Postmaster General, Delta Air Lines, Inc., Hughes Air Corp., National Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions, and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Valley Airlines, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to

<sup>1</sup>This order to show cause is not a final action and is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Valley Airlines, Inc., the Postmaster General, Delta Air Lines, Inc., Hughes Air Corp., National Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,  
Secretary.

[F.R. Doc. 70-16694; Filed, Dec. 10, 1970;  
8:48 a.m.]

[Docket No. 21761]

## WEIGHT LIMITATION INVESTIGATION

### Notice of Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that the above-entitled proceeding is hereby assigned for hearing at the following places before Examiner Merritt Ruhlen:

Date and time	City	Address
10 a.m., Jan. 11-12, 1971.	San Francisco, Calif.	Room 260, U.S. Court of Appeals, Post Office Bldg., 1076 Mission St.
10 a.m., Jan. 14-15, 1971.	Chicago, Ill.	Room 2119, Everett McKinley Dirksen Bldg., 219 South Dearborn St.
10 a.m., Jan. 18-20, 1971.	Houston, Tex.	Room 11003, U.S. Courthouse, 515 Busk Ave.
10 a.m., Jan. 25, 1971.	Washington, D.C.	Room 720, Universal Bldg., Connecticut and Florida Ave. NW.

This is an investigation instituted by the Board to determine whether the 12,500 pound limitation on maximum certificated takeoff weight for equipment used by air taxi operators pursuant to Part 298 of the Board's economic regulations should be liberalized and if so, what change or changes should be made.

For further details with respect to the issues involved in this proceeding, interested persons are referred to the orders

and notices entered by the Board and the Examiner, the documents filed by the parties and the Examiner's Prehearing Conference Report served May 12, 1970, and the Supplemental Prehearing Conference Report served June 8, 1970, all of which are filed with the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., December 7, 1970.

[SEAL] MERRITT RUHLEN,  
Hearing Examiner.

[F.R. Doc. 70-16695; Filed, Dec. 10, 1970;  
8:48 a.m.]

## FEDERAL MARITIME COMMISSION

### HAPAG-LLOYD AG ET AL.

#### Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 48 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

#### Notice of agreement filed by:

Mr. R. J. Finnan, Lykes Bros. Steamship Co., Inc., 821 Gravier Street, New Orleans, LA 70150.

Hapag-Lloyd AG, Ozean/Stinnes Linien, Lykes Bros. Steamship Co., Inc. and Farrell Lines.

Agreement No. 9768-2 amends the basic agreement to include Farrell Lines as a participant in the interchange of cargo containers and/or related equipment between points in the Gulf/United Kingdom—North European trade and/or Gulf/South and East Africa-Australia trade in accordance with the terms and conditions set forth therein.

Dated: December 8, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,  
Secretary.

[F.R. Doc. 70-16704; Filed, Dec. 10, 1970;  
8:49 a.m.]

**FLORIDA INTER-ISLAND SHIPPING  
CORP. AND CANADIAN GULF LINE  
OF FLORIDA, INC.**

**Notice of Agreement Filed**

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La, and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

William C. Lewis, Jr., Esquire, Smathers & Thompson, 1301 Du Font Building, Miami, FL 33131.

Agreement No. 9914 between Florida Inter-Island Shipping Corp. (Inter-Island), a common carrier by water, and Canadian Gulf Line of Florida, Inc. (Canadian Gulf), a steamship agent and terminal operator, provides for the purchase of certain physical assets, including the trade name "Florida Lines" of Inter-Island by Canadian Gulf. Inter-Island has been operating various services between U.S. ports and ports in the Virgin Islands, Haiti, Dominican Republic, Caribbean, South and Central America and will withdraw from the aforementioned trade. Florida Lines, Ltd., a Liberian corporation, desires to continue the operation of the service or a portion thereof using time chartered vessels, with Canadian Gulf acting as general agent.

Canadian Gulf will permit Florida Lines, Ltd., to operate under the trade name "Florida Lines" and will assist in obtaining for its use Inter-Island's tariffs. Inter-Island and its shareholders agree not to compete with Canadian Gulf and Florida Lines, Ltd., for 5 years in regard to regular liner service between the ports of Miami, Houston, Tampa, and New Orleans, and the Virgin Islands, Venezuela, Haiti, and the Dominican Republic. Inter-Island will agree not to engage in business under said corporate name for 5 years from December 31, 1970.

Canadian Gulf may act as general agent for Inter-Island and other shipping companies and also as port and/or booking agent for Inter-Island.

Dated: December 8, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,  
Secretary.

[F.R. Doc. 70-16730; Filed, Dec. 10, 1970;  
8:50 a.m.]

**GENERAL SERVICES  
ADMINISTRATION**

[Federal Property Management Regs.: Temporary Reg. F-81]

**SECRETARY OF DEFENSE**

**Delegation of Authority**

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the customer interest of the Federal Government in an electric energy rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the interests of the executive agencies of the Federal Government before the Federal Power Commission in a proceeding (Docket No. E-7560) involving wholesale electric energy rates of the Delmarva Power & Light Co.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: December 4, 1970.

ROBERT L. KUNZIG,  
Administrator of General Services.

[F.R. Doc. 70-16659; Filed, Dec. 10, 1970;  
8:45 a.m.]

**INTERIM COMPLIANCE PANEL  
(COAL MINE HEALTH AND  
SAFETY)**

**UNITED STATES FUEL CO. AND  
STEWART COAL CO.**

Applications for Renewal Permits;  
Notice of Opportunity for Public  
Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.<sup>3</sup>) have been received as follows:

(1) ICP Docket No. 11001, United States Fuel Co., King Mine, USBM ID No. 42 00098 0, Hiawatha, Carbon County, Utah, Section ID No. 001 (10th East).

(2) ICP Docket No. 10582, Stewart Coal Co., USBM ID No. 15 02522 0, Belcher, Pike County, Ky. (Left Mains).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742 et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,  
Chairman,  
Interim Compliance Panel.

[F.R. Doc. 70-16687; Filed, Dec. 10, 1970;  
8:48 a.m.]

**FEDERAL POWER COMMISSION**

[Docket No. R171-450, etc.]

**HUMBLE OIL & REFINING CO. ET AL.**

Order Providing for Hearings on and  
Suspension of Proposed Changes in  
Rates<sup>1</sup>

DECEMBER 1, 1970.

The respondents named herein have filed proposed increased rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

<sup>1</sup>Does not consolidate for hearing or dispose of the several matters herein.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice

and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules

sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before January 18, 1971.

By the Commission.

[SEAL] GORDON M. GRANT, Secretary.

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in docket Nos.
									Rate in effect	Proposed increased rate	
RI71-460..	Humble Oil & Refining Co.	338	8	Natural Gas Pipeline Co. of America (Sugar Valley Field, Matagorda County, Tex., R.R. District No. 3).	\$63,574	11-6-70	12- 7-70	5- 7-71	20.0	22.6844	RI70 670.
.....do.....	.....do.....	391	23	Texas Eastern Transmission Corp. (Helen Gohlke Field, De Witt County, Tex., R.R. District No. 2).	(?)	11-6-70	12- 7-70	5- 7-71	15.6683	14.16.1884	RI68 367.
.....do.....	.....do.....	424	12	Natural Gas Pipeline Co. of America (West Bernard Field, Wharton County, Tex., R.R. District No. 3).	3,335	11-6-70	12- 7-70	5- 7-71	20.0	20.7331	RI70 669.
.....do.....	.....do.....	272	4	Trunkline Gas Co. (Heard Ranch and Medio Creek Fields, Lee County, Tex., R.R. District No. 2).	5,372	11-9-70	1- 1-71	6- 1-71	10.31	17.3138	RI68 2.
.....do.....	.....do.....	325	7	Trunkline Gas Co., (Quicksand Creek Field, Newton County, Tex., R.R. District No. 3).	383	11-9-70	1- 1-71	6- 1-71	18.0660	19.0703	RI69-194.
.....do.....	.....do.....	350	3	Natural Gas Pipeline Co. of America (Santa Fe et al. Fields, Brooks et al. Counties, Tex., R.R. District No. 4).	101,072	11-9-70	1- 1-71	6- 1-71	16.06	17.0639	RI70 426.
.....do.....	.....do.....	110	18	United Gas Pipeline Co. (Pistol Ridge and Marie Fields, Forest et al. Counties, Miss.).	31,777	11-6-70	12- 7-70	5- 7-71	20.0	24.0	
RI71-461..	J. E. Stack, Jr.	1	12	United Gas Pipeline Co. (Gwinville Field, Jefferson Davis County, Miss.).	215,475	11-9-70	12-10-70	5-10-71	17.0	25.46	
RI71-462..	Atlantic Richfield Co.	332	13	Tennessee Gas Pipeline, a division of Tennessee, Inc. (Donna Area, Hidalgo County, Tex., R.R. District No. 4).		11-9-70	12-10-70	Accepted	15.0555		RI70-700.
.....do.....	.....do.....	332	14	.....do.....	197,694	11-9-70	12-10-70	5-10-71	15.0555	18.0	RI70 700.
RI71-463..	H. H. Phillips, Jr.	32	32	Transcontinental Gas Pipe Line Corp. (La Gloria Field, Brooks and Jim Wells Counties, Tex., R.R. District No. 4).		11-6-70	1- 1-71	Accepted	11.04125		
.....do.....	.....do.....	4	33	.....do.....	4,263	11-6-70	1- 1-71	6- 1-71	11.04125	12.0	
RI71-464..	Cabot Corp. (SW)	50	6	El Paso Natural Gas Co. (Spraberry and Zulette-Russelman Fields; Reagan County, Tex., R.R. District No. 7-C., Permian Basin).	433	11-2-70	12- 3-70	5- 3-71	18.3105	19.3278	RI69 454.
RI71-465..	Pan American Petroleum Corp.	129	43	El Paso Natural Gas Co. (Spraberry Field; Reagan and Upton Counties, Tex., R.R. District No. 7-C, Permian Basin).	406	11-5-70	12- 6-70	5- 6-71	14.60	19.33	

\* Unless otherwise stated, pressure base is 14.65 p.s.i.a.  
 1 Base rate of 14.8733 cents, 0.0651-cent tax reimbursement; also 0.5-cent for dehydration and 0.76-cent delivery pressure service charge.  
 2 No current deliveries.  
 3 Includes 0.25 cent for dehydration charged to buyer.  
 4 From fractured rate to contractually due rate plus tax reimbursement.  
 5 Settlement rate.  
 6 Amendatory agreement of Oct. 15, 1970 provides among other things for a 10-year extension of term of contract and for a renegotiated rate of 18 cents for period from Nov. 1, 1969 to Nov. 1, 1974, with 1 cent increases each 5 years thereafter.  
 7 Amendatory agreement of July 10, 1970 provides among other things for an extension of term of contract until Apr. 1, 1981 and thereafter from year to year; also provides for renegotiated rates of 19 cents and 21-cents.

8 For gas that does not require compression.  
 9 For compressed gas.  
 10 For gas discovered prior to Sept. 23, 1969.  
 11 For gas discovered after Sept. 23, 1969, estimated at 15 percent.  
 12 Includes 2 cents compression charge and 0.21531 cent dehydration charge and applicable tax reimbursement.  
 13 Applicable only to gas sold from acreage reacquired by Pan American under Supplements Nos. 40 and 42. All other gas under subject rate schedule is being sold at the 19.33 cents per Mcf rate, ESR in Docket No. RI70-781.  
 14 The pressure base is 15.025 p.s.i.a.  
 15 Accepted as a contract amendment effective as of the date set forth in the "Effective Date Unless Suspended" column. The proposed increased rate contained therein, however, is suspended as provided herein.

Humble Oil & Refining Co. requests that the suspension period be limited to 1 day if the increase is suspended. Good cause has not been shown for granting request and it is denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

[F.R. Doc. 70-16573; Filed, Dec. 10, 1970; 8:45 a.m.]

[Docket No. G-10283 etc.]  
**BRADLEY PRODUCING CORP.**  
 Notice of Petition To Amend  
 DECEMBER 4, 1970.

Take notice that on August 7, 1970, The Bradley Producing Corp. (petitioner), 313 North Main Street, Wells-ville, NY 14895, filed in Docket No. G-10283 et al., a petition to amend the

orders issuing certificates of public convenience and necessity in said dockets pursuant to section 7(c) of the Natural Gas Act by substituting petitioner, a Delaware corporation, in lieu of Bradley Resources Corp., formerly The Bradley Producing Corp., a New York corporation, as certificate holder, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the certificate holder, The Bradley Producing Corp., a New York corporation changed its name to Bradley Resources Corp., and subsequently conveyed certain producing properties to petitioner. Petitioner, proposes to continue without change sales of natural gas in interstate commerce from said properties.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT,  
*Secretary.*

[F.R. Doc. 70-16686; Filed, Dec. 10, 1970;  
8:47 a.m.]

[Docket No. CP70-313]

### LONE STAR GAS CO.

#### Notice Extending Time and Postponing Hearing

DECEMBER 3, 1970.

On November 27, 1970, Lone Star Gas Co. requested an extension of time within which to file and serve proposed evidence, including testimony of witnesses and exhibits as required by paragraph (C) of the order issued November 23, 1970, in the above-designated proceeding.

Upon consideration of said request the time within which applicant shall file with the Commission and serve on the petitioner, the Commission's Staff and the Presiding Examiner proposed evidence, including prepared testimony and exhibits, is extended to and including December 21, 1970. The hearing on the issues presented by Lone Star's application in Docket No. CP70-313 is postponed from January 5, 1971 to January 12, 1971. Ordering paragraphs (B) and (C) of the order issued November 23, 1970 are amended accordingly.

GORDON M. GRANT,  
*Secretary.*

[F.R. Doc. 70-16689; Filed, Dec. 10, 1970;  
8:47 a.m.]

[Docket No. RP71-45]

### PENNSYLVANIA GAS CO.

#### Notice of Proposed Changes in Rates and Charges

DECEMBER 3, 1970.

Take notice that Pennsylvania Gas Co. (Penn Gas) on November 25, 1970, tendered for filing its FPC Gas Tariff, original volume No. 1, 17th revised sheet

No. 4, containing proposed increases in rates and charges to become effective on January 9, 1971. Penn Gas requests that the proposed increase be placed in effect without suspension. The proposed increase would increase charges to Penn Gas' sole jurisdictional customer by \$13,775 annually, based on operations for the 12-month period ending September 30, 1970, as adjusted, including an 8.35 percent overall rate of return.

Penn Gas states that the proposed increase is necessary to compensate for increased purchased gas costs, wages and salary increases, and increases in various taxes, both State and Federal. In addition to the proposed increased rates, Penn Gas requests permission, for 1 year from the effective date of the proposed increase, to "track" increases or decreases in the cost of purchased gas from the level shown in its filing. In support of its filing, Penn Gas submitted Statements L-N, and requests waiver of such Commission rules and regulations necessary to permit the proposed increase to become effective.

Copies of the filing have been served on North East Heat & Light Co. and the Pennsylvania Public Utilities Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 21, 1970, file with the Federal Power Commission, Washington, D.C. 20426 petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,  
*Secretary.*

[F.R. Doc. 70-16687; Filed, Dec. 10, 1970;  
8:47 a.m.]

[Dockets Nos. RP71-46—RP71-48]

### SOUTHERN NATURAL GAS CO.

#### Notice of Proposed Changes in Rates and Charges

DECEMBER 4, 1970.

Take notice that Southern Natural Gas Co. (Southern) on November 24, 1970, tendered for filing proposed rate changes in its FPC Gas Tariff, Original Volume No. 3 to become effective on January 10, 1971. The proposed rate changes would increase Southern's total annual revenues by \$68,871 as follows: Second Revised Sheet No. 100 by \$11,119; Original Sheet No. 150A by \$1,502, and First Revised Sheet No. 278A by \$56,250.

Southern states that these rate changes reflect increases in the price of

gas sold by Southern in southern and offshore Louisiana, and that such increases are consistent with its contract provisions and Commission orders in Dockets Nos. R-394 and AR69-1.

Southern asserts that the increased rates provided by Second Revised Sheet No. 100 and Original Sheet No. 150A reflect the proposed settlement rates in the Southern Louisiana Area Rate Proceeding, Docket No. AR69-1 et al. for gas contracts dated prior to October 1, 1968, and that such rates are lower than those to which Southern is contractually entitled. Southern further states that the increased rate provided by First Revised Sheet No. 278A reflects the contract rate of gas well gas sold by Southern to Sea Robin.

Copies of the filings were served on Southern's customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 28, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,  
*Secretary.*

[F.R. Doc. 70-16683; Filed, Dec. 10, 1970;  
8:47 a.m.]

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 70-3]

### AVCO CORP.

#### Notice of Intent To Grant Foreign Patent License

In accordance with the NASA Foreign Patent Licensing Regulations, 14 CFR 1245.405(e), the National Aeronautics and Space Administration announces its intention to grant to Avco Corp., Wilmington, Mass., an exclusive patent license for the manufacture, use and sale in certain countries other than the United States of selected inventions relating to fire-retardant foams and coatings. Interested parties should submit written inquiries or comments within 60 days to the Assistant General Counsel for Patent Matters (Code GP) National Aeronautics and Space Administration, Washington, D.C. 20546.

GEORGE M. LOW,  
*Acting Administrator.*

[F.R. Doc. 70-16670; Filed, Dec. 10, 1970;  
8:46 a.m.]

## TARIFF COMMISSION

[TEA-F-14]

### ALBANY BILLIARD BALL CO.

#### Notice of Hearing Regarding Petition for Determination of Eligibility To Apply for Adjustment Assistance

Upon request of an interested party, the U.S. Tariff Commission has ordered a public hearing in connection with the investigation instituted on November 24, 1970, under section 301(c)(1) of the Trade Expansion Act of 1962, on petition filed by the Albany Billiard Ball Co., Albany, N.Y. (35 F.R. 18306). The hearing in this investigation will be held jointly with the hearing in connection with Investigation No. TEA-I-19 under section 301(b)(1) of the Trade Expansion Act (35 F.R. 16210), beginning at 10 a.m., on December 15, 1970, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, DC.

Issued: December 9, 1970.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.[F.R. Doc. 70-16754; Filed, Dec. 10, 1970;  
8:50 a.m.]

## INTERSTATE COMMERCE COMMISSION

### FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 8, 1970.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 42088—*Chlorine, to Westvaco, Ky.* Filed by Southwestern Freight Bureau, agent (No. B-200), for interested rail carriers. Rates on chlorine, in tank carloads, as described in the application, from points in Louisiana and Texas to Westvaco, Ky.

Grounds for relief—Market competition.

Tariffs—Supplements 243 and 138 to Southwestern Freight Bureau, agent, tariffs ICC Nos. 4668 and 4773, respectively.

By the Commission.

[SEAL] ROBERT L. OSWALD,  
Secretary.[F.R. Doc. 70-16698; Filed, Dec. 10, 1970;  
8:48 a.m.]

[Notice 206]

### MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 8, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

#### MOTOR CARRIERS OF PROPERTY

No. MC 117165 (Sub-No. 34 TA) (Correction), filed November 17, 1970, and published FEDERAL REGISTER issue November 26, 1970, and republished as corrected this issue. Applicant: C. J. DAVIS, doing business as LOUIS FREIGHT LINES, West Relief Highway U.S. 20, Box 493, Michigan City, IN 46320. Applicant's representative: Martin J. Leavitt, 1800 Buhl Building, Detroit, MI 48226. NOTE: The purpose of this republication is to add the State of West Virginia as an origin State on inbound movement which was inadvertently omitted from previous publication, the rest of notice remains as previously published.

No. MC 117344 (Sub-No. 209 TA) (Correction), filed November 19, 1970, and published FEDERAL REGISTER issue, November 28, 1970, and republished as corrected this issue. Applicant: THE MAXWELL CO., 10380 Evendale Drive, Post Office Box 15010, Cincinnati, OH 45215. Applicant's representative: John C. Spencer, 10380 Evendale Drive, Cincinnati, OH 45215. NOTE: The purpose of this republication is to reflect the correct Sub-No. as 209 in lieu of 208, the rest of the publication remains as previously published.

No. MC 124212 (Sub-No. 52 TA), filed December 2, 1970. Applicant: MITCHELL TRANSPORT, INC., 21111 Chagrin Boulevard, Cleveland, OH 44122. Applicant's representative: J. A. Kundtz, National City Bank Building, Cleveland, OH 44114. Authority sought to operate

as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, in tank vehicles, from the plantsite of Lehigh Portland Cement Co. at Union Bridge, Md., to Runnemede, N.J., for 180 days. Supporting shipper: Lehigh Portland Cement Co., 718 Hamilton Street, Allentown, PA 18105. Send protests to: District Supervisor G. J. Bacel, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 125803 (Sub-No. 4 TA), filed December 2, 1970. Applicant: AAACON AUTO TRANSPORT, INC., 147 West 42d Street, New York, NY 10036. Applicant's representative: Paul Zola (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Repossessed, stolen or abandoned used passenger automobiles*, moving to automobile dealers, in driveway service, in secondary movements, with or without baggage, personal effects, and sporting equipment, between points in the United States, including Alaska and excluding Hawaii, for 180 days. Supported by: There are approximately 18 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Stephen P. Tomany, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, NY 10007.

No. MC 126780 (Sub-No. 4 TA), filed December 2, 1970. Applicant: MACK E. BURGESS, doing business as BUILDERS TRANSPORT, Post Office Box 1022, 409 14th Street SW., Great Falls, MT 59401. Applicant's representative: Howard C. Burton, 504 Strain Building, Great Falls, MT 59401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum board and gypsum board products, such as gypsum lath, gypsum sheathing and gypsum joint system products*, from the plantsite of Georgia Pacific Corp. at Lovell, Wyo., to points in Montana, with return of *damaged or rejected shipments and pallets*, for 180 days. NOTE: Applicant states it does intend to tack the authority sought with its existing authority at the ports of entry along Montana-Canada border. Supporting shipper: Georgia-Pacific Corp., 900 Southwest Fifth Avenue, Portland, OR. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251, United States Post Office Building, Billings, MT 59101.

By the Commission.

[SEAL] ROBERT L. OSWALD,  
Secretary.[F.R. Doc. 70-16697; Filed, Dec. 10, 1970;  
8:48 a.m.]

**CENTRAL RAILROAD COMPANY OF  
NEW JERSEY**

**Notice of Conference**

DECEMBER 9, 1970.

The Central Railroad Company of New Jersey for some time has been in reorganization under section 77 of the Bankruptcy Act. The railroad performs important transportation of freight and passengers in New Jersey and Pennsylvania, among other things transporting an estimated 10,000-15,000 commuter passengers daily over its lines. The financial condition of the railroad has become increasingly serious, particularly in regard to shortage of cash necessary to continuance of orderly operations. A motion to liquidate the railroad has been filed and is pending before the reorganization court.

The Commission is desirous of considering the car service provisions of the Interstate Commerce Act and such other means as are within its statutory jurisdiction to avoid any cessation of essential services provided by this carrier. One

step which is under consideration is the prehearing conference scheduled for December 16, 1970, in Finance Docket No. 23178, Chesapeake & Ohio Railway Co. and Baltimore & Ohio Railroad Co.—Control—Western Maryland Railway Co., and Finance Docket No. 24535, Central Railroad Company of New Jersey Reorganization. A record must be made in those proceedings in order to determine the issues therein. Meanwhile, by this notice, which is being published in the FEDERAL REGISTER and is being served on parties in the above-numbered proceedings, the Commission is calling a conference to be held in the Commission's office in Washington, D.C., beginning at 10 a.m., on Thursday, December 17, 1970, to consider possible emergency measures. Invited to the conference are operating officials and other representatives of the following: Trustee of the Central Railroad Company of New Jersey, the Reading Co., the Chesapeake & Ohio Railway Co., the Baltimore & Ohio Railroad Co., the Norfolk & Western Railway Co., the Trustees of the Penn Central Transportation Co., the

Erie Lackawanna Railway Co., the New York, Susquehanna and Western Railway Co., the Trustees of the Lehigh Valley Railroad Co., Lehigh & Hudson River Railway, Wharton and Northern Railroad, Delaware and Hudson Railroad, Pennsylvania-Reading Seashore Lines, Lehigh Coal & Navigation Co., the governors and other interested State officials of the States of New Jersey and Pennsylvania, including the regulatory officials of those States, the Department of Transportation, the Port of New York Authority, the representatives of labor organizations, and other interested persons.

All persons having an interest in the meeting are requested to advise the Secretary of the Commission of their intention to be present and the nature of their interest not later than December 15, 1970.

[SEAL]

ROBERT L. OSWALD,  
Secretary.

[P.R. Doc. 70-16741; Filed, Dec. 10, 1970;  
8:50 a.m.]

## CUMULATIVE LIST OF PARTS AFFECTED—DECEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during December.

1 CFR	Page	8 CFR	Page	16 CFR	Page
<b>PROPOSED RULES:</b>		204	18582	501	18510
16	18297	205	18582		
		212	18582	<b>17 CFR</b>	
<b>3 CFR</b>		234	18582	230	18456
<b>PROCLAMATIONS:</b>		245	18582	240	18456, 18510
4022	18653	299	18583	249	18512
4023	18655			<b>PROPOSED RULES:</b>	
<b>EXECUTIVE ORDERS:</b>		<b>9 CFR</b>		230	18670
6143 (revoked in part by PLO 4948)	18379	76	18262, 18313, 18730, 18734, 18795	239	18477
6276 (revoked in part by PLO 4948)	18379	92	18795	240	18670, 18760
6583 (revoked in part by PLO 4948)	18379	204	18262	249	18760
6868 (modified by EO 11571)	18717	<b>PROPOSED RULES:</b>			
7784-A (see EO 11571)	18717	201	18745		
8033 (see EO 11571)	18717	311	18672		
9344 (see EO 11571)	18717	317	18745	<b>18 CFR</b>	
9916 (see EO 11571)	18717			2	18585
10128 (see EO 11571)	18717	<b>10 CFR</b>		4	18585
11401 (see EO 11571)	18717	20	18385	<b>PROPOSED RULES:</b>	
11571	18717	50	18385, 18469	2	18402
				3	18324
<b>5 CFR</b>		<b>12 CFR</b>		11	18324
213	18322, 18359, 18581	201	18450	32	18324
351	18729	202	18658	33	18324
352	18505	213	18658	34	18324
511	18581	224	18369	35	18324
534	18581, 18730	329	18314	36	18324
630	18581	545	18583	45	18324
752	18729	563	18506, 18583	101	18626, 18627
		<b>PROPOSED RULES:</b>		104	18626, 18627
		740	18533	154	18629
				157	18402
		<b>14 CFR</b>		159	18324
		21	18450	201	18626, 18627
		37	18450	204	18626, 18627
		39	18372, 18451-18454, 18584, 18734, 18735		
		71	18454, 18455, 18506-18509, 18584, 18735, 18736	<b>19 CFR</b>	
		73	18274, 18736	6	18265
		95	18659	8	18265
		97	18314, 18509	10	18265, 18369
		135	18585	11	18265
		207	18274	12	18265, 18766
		<b>PROPOSED RULES:</b>		18	18265
		39	18475	21	18265
		71	18476, 18746-18749	23	18265
		75	18402, 18476	24	18736
		207	18621	25	18265
		208	18621	171	18265
		212	18621	172	18267
		214	18621	<b>PROPOSED RULES:</b>	
		221	18749	1	18590
		295	18621	4	18284
		302	18877	6	18284
		373	18621	8	18284
		376	18877	15	18284
		378	18622	18	18284
		378a	18622	123	18284
		<b>15 CFR</b>		<b>21 CFR</b>	
		368	18315	120	18370, 18512, 18513
		369	18316	121	18269, 18370, 18458, 18666
		370	18316	135c	18458
		372	18316	135e	18666
		373	18316	135g	18458
		376	18317	141	18667
		386	18317	146a	18270
		387	18317	146b	18272
				146c	18513
				147	18669
				148e	18513
				148f	18522
				148j	18667
				148t	18460

**21 CFR—Continued**

	Page
<b>PROPOSED RULES:</b>	
3.....	18679
15.....	18530
120.....	18531, 18622
121.....	18623
125.....	18475

**23 CFR**

Ch. I.....	18719
1.....	18719
15.....	18719
20.....	18719
22.....	18719

**24 CFR**

203.....	18522, 18796
207.....	18523
213.....	18523, 18796
220.....	18523
221.....	18523, 18524
232.....	18523
234.....	18523, 18796
235.....	18523
236.....	18524
241.....	18524
242.....	18796
1000.....	18524
1100.....	18524
1914.....	18459
1915.....	18460

**25 CFR**

<b>PROPOSED RULES:</b>	
15.....	18392

**26 CFR**

1.....	18587
13.....	18524
20.....	18461
25.....	18461
31.....	18525
48.....	18525
<b>PROPOSED RULES:</b>	
1.....	18389, 18391, 18537, 18599
13.....	18391
181.....	18603

**28 CFR-**

0.....	18467
45.....	18526

**29 CFR**

102.....	18796
103.....	18370
526.....	18729
870.....	18526
1601.....	18661
<b>PROPOSED RULES:</b>	
5.....	18672
5a.....	18672

**30 CFR**

55.....	18587
56.....	18589
57.....	18591
300.....	18870

**30 CFR—Continued**

	Page
302.....	18870
503.....	18274, 18593
505.....	18871

<b>PROPOSED RULES:</b>	
70.....	18671

**32 CFR**

52.....	18371
67.....	18277
68.....	18277
88.....	18277
244.....	18277
269.....	18277
274.....	18277
1480.....	18279
1712.....	18313

**32A CFR**

<b>BDC (Ch. VI):</b>	
BDC Notice 3.....	18279
DMS Order 4, Dir. 1.....	18527
DMS Order 4, Dir. 2.....	18527
DPS Reg. 1.....	18528
<b>OIA (Ch. X):</b>	
OI Reg. 1.....	18528

<b>PROPOSED RULES:</b>	
Ch. X.....	18530

**33 CFR**

110.....	18374
----------	-------

**38 CFR**

2.....	18871
3.....	18280, 18661
36.....	18388, 18871

**39 CFR**

125.....	18743
----------	-------

**41 CFR**

1-15.....	18797
5A-73.....	18374
8-3.....	18375
8-6.....	18375
8-7.....	18375
8-30.....	18376
18-1.....	18803
101-26.....	18593
105-61.....	18737

**42 CFR**

81.....	18527, 18594, 18662, 18737, 18872, 18873
---------	--

<b>PROPOSED RULES:</b>	
81.....	18292, 18293

**43 CFR**

18.....	18376
2920.....	18663

<b>PUBLIC LAND ORDERS:</b>	
243 (see PLO 4954).....	18381
659 (revoked in part and modified by PLO 4949).....	18379
3065 (see PLO 4956).....	18381

**43 CFR—Continued**

	Page
<b>PUBLIC LAND ORDERS—Continued</b>	
4496 (see PLO 4956).....	18381
4582 (modified by PLO 4962).....	18874
4948.....	18379
4949.....	18379
4950.....	18380
4951.....	18380
4952.....	18380
4953.....	18380
4954.....	18381
4955.....	18381
4956.....	18381
4957.....	18382
4958.....	18595
4962.....	18874

<b>PROPOSED RULES:</b>	
2850.....	18399

**45 CFR**

61.....	18874
131.....	18875

<b>PROPOSED RULES:</b>	
206.....	18402
249.....	18878

**46 CFR**

310.....	18264
350.....	18595

**47 CFR**

1.....	18664
73.....	18596, 18738
83.....	18665
95.....	18664

<b>PROPOSED RULES:</b>	
1.....	18674
15.....	18674
23.....	18624
25.....	18624
73.....	18625, 18626, 18678, 18679
74.....	18625

**49 CFR**

1.....	18467
7.....	18318
171.....	18276, 18382
178.....	18528
1033.....	18318, 18319, 18468

<b>PROPOSED RULES:</b>	
171.....	18879
173.....	18534, 18879
174.....	18323
177.....	18323
178.....	18879
571.....	18295, 18297, 18402, 18536
574.....	18476
1249.....	18402
1322.....	18751

**50 CFR**

17.....	18319
28.....	18529
33.....	18597, 18665, 18666, 18740, 18741
Ch. II.....	18455

